DOCUMENT RESUME

ED 401 178 SO 026 598

AUTHOR Reggio, Michael H.
TITLE Lawyer's Resource Manual for Lawyers Helping in the Schools.
INSTITUTION Oklahoma Bar Association, Oklahoma City.
PUB DATE [89]
NOTE 81p.; Some pages may not reproduce clearly.
AVAILABLE FROM Oklahoma Bar Association, Law Related Education Committee, P.O. Box 53036, Oklahoma City, OK 73152.
PUB TYPE Guides - Non-Classroom Use (055)

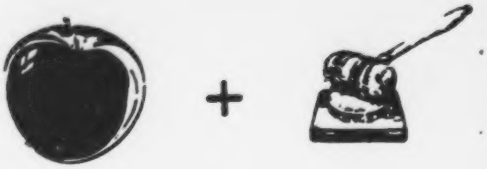
EDRS PRICE MF01/PC04 Plus Postage.
DESCRIPTORS Elementary Secondary Education; Instructional Materials; *Law Related Education; *Lawyers; Resource Materials; Social Studies; Teaching Methods

ABSTRACT

Prepared to help lawyers have positive and successful interactions with students and teachers, this manual provides lesson plans that have been tested by lawyers in classrooms. The book is divided into three sections. The first section explains law related education (LRE) and contains general information for attorneys preparing to teach. It includes advice to lawyers in a "do" and "don't" format, such as do translate "legalese" into English and don't lecture at students. The second section explains teaching techniques that have proven to be successful in the classroom, including guidelines for role-playing. The third section contains 32 specific lesson plans. The lessons are intended to require very little preparation and outside resource material. (LH)

***********************************************************************
* Reproductions supplied by EDRS are the best that can be made *
* from the original document. *
***********************************************************************

ED 401 178



# LAWYER'S RESOURCE MANUAL

FOR

LAWYERS HELPING IN THE SCHOOLS

**Oklahoma Bar Association**
**Law Related Education Committee**
**1901 N. Lincoln Blvd.**
**P.O. Box 53036**
**Oklahoma City, OK 73152**

"PERMISSION TO REPRODUCE THIS MATERIAL HAS BEEN GRANTED BY

M.H. Reggio

TO THE EDUCATIONAL RESOURCES INFORMATION CENTER (ERIC)."

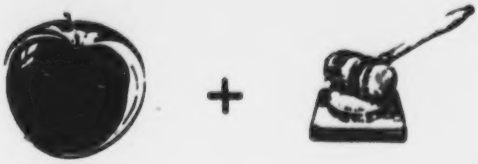
U.S. DEPARTMENT OF EDUCATION
Office of Educational Research and Improvement
EDUCATIONAL RESOURCES INFORMATION CENTER (ERIC)

☐ This document has been reproduced as received from the person or organization originating it.

☑ Minor changes have been made to improve reproduction quality.

- Points of view or opinions stated in this document do not necessarily represent official OERI position or policy.

SO 026598



# LAWYER'S RESOURCE MANUAL

## FOR

## LAWYERS HELPING IN THE SCHOOLS

President: Andrew M. Coats

Executive Director: Marvin C. Emerson
Chairperson, LRE Committee: James E. Golden, Jr.
Vice-Chairperson, LRE Committee: B. Don Barnes
LRE Coordinator: Michael H. Reggio
Director of Public Information: Martha Snow
Editor: Michael H. Reggio

**Oklahoma Bar Association**
**Law Related Education Committee**
**1901 N. Lincoln Blvd.**
**P.O. Box 53036**
**Oklahoma City, OK 73152**

All rights are reserved, except that any part of this publication may be reproduced in any manner without the written permission of the publisher, provided that credit is given to the publisher and author for its availability.

Published by the Oklahoma Bar Association, P.O. Box 53036, Oklahoma City, OK 73152.

## TABLE OF CONTENTS

Introduction .................................................. 1
"Do's and Don'ts" .............................................. 1
"Twelve Hints for Lawyers" ..................................... 2
"Law-Related Education in Elementary and Secondary Schools" ..... 3
"Sure-Fire Presentations" ...................................... 5
"Guidelines For Role-Playing" .................................. 9
"Law in Toyland: A Mindwalk Classroom Stategy" .................. 11
"Law In Your Life" ............................................. 13
"No Pets Allowed" .............................................. 15
"No Vehicles In The Park" ...................................... 17
"School Rule: Do Not Wear Hats Here" ........................... 23
"Legal Procedure: Teaching About Contracts/Grades K-4" .......... 25
"Candy Bar Contracts" .......................................... 29
"Is There An Enforceable Contract?" ............................ 33
"Just The Facts, Please" ....................................... 35
"Dispute Resolution: The Case of the Professional Tap Dancer" ... 37
"Alternatives: Mediation and the Adversary Process/Grades 5-12" . 41
"A Visitor From Outer Space" ................................... 43
"Do the Bill of Rights Rap!" ................................... 45
"Liberty: Introducing the First Amendment/Grades 4-9" ........... 47
"Liberty: The Bill of Rights/Grades 4-6" ........................ 49
"Liberty: Freedom of Speech/Grades 4-6" ......................... 53
"Liberty: Freedom of Speech and Expression/Grades 7-12" ......... 55
"Liberty: Come to the First Amendment Fair/Secondary" ........... 57
"Fundamental Freedoms: Teaching About Search and Seizure" ....... 61

"Justice: Searches Without Warrants/Grades 9-12" ........................ 65

"You Are The Supreme Court: Decide!" .................................. 67

"Liberty: Historical Foundations of Individual Liberties/Grades 9-12" ... 71

"Justice: Right to Counsel/Grades 9-12" ................................ 75

"Case Study: A Little Girl's Struggle for an Equal Education: The Case of Linda Brown" .................................................. 79

"The Case of the Controversial School Newspaper" ........................ 81

"What's Reasonable Punishment In Schools?" .............................. 83

"Difficult Dilemma - Kathy's Catastrophe: Whose Fault Is It?" ........... 85

"Teenage Executions: The Case of Thompson v. Oklahoma.................... 87

"When Should Juveniles Be treated As Adults?---You Decide (A Certification Hearing)............................................. 91

"Justice: Making Wrongs Right/Grades K-6" .............................. 93

"Justice: What is Procedural Justice/Middle/Secondary................... 95

"Democracy: The U.S.S.R. - A Democratic Constitutional Government?"...... 99

THANK YOU for agreeing to share your expertise, knowledge, and your enthusiasm with Oklahoma students and teachers.YOU WILL MAKE A HUGE DIFFERENCE IN THEIR EDUCATIONAL LIVES. Your effective classroom presentation will increase understanding of the law, the judicial system, and the government. You will also be playing an important role in helping our students learn to become good citizens and be able to rationally participate in our complex society. In addition, you will be raising the esteem of the school and general public for lawyers and those in law related professions.

Lawyer participation in public education programs is specifically encouraged in the Code of Professional Responsibility (Canon 2) and you will find law-related education a rewarding form of public service. It is exciting and fun. You will receive rewards and feedback from students and teachers that you might not expect.

The Oklahoma Bar Association/Law Related Education Division is here to help you have positive and successful interaction with students and teachers. This book has been prepared to give you successful "lesson plans" that have been tested by lawyers in classrooms. You can use these with very little preparation and outside resource material. Specifically, this book has been divided into three sections. The first explains what is law-related education and contains general information for attorneys. The second section explains certain teaching techniques that have proven to be successful in the classroom. The third section contains specific classroom tested, classroom ready lesson plans.

Additional lesson plans and resource information are available through the Law Related Education Department at the Oklahoma Bar Association at no cost to attorneys. Contact your County Law Related Education Coordinator or the State Law Related Education Coordinator at the following address:.

Michael H. Reggio, LRE Coordinator
Law Related Education
Oklahoma Bar Association
P.O. Box 53036
Oklahoma City, OK 73152

(405) 524-2365 or (800) 522-8065

## DO'S AND DON'TS

Here is some advice that law-related educators frequently give to lawyers and law students:

DO

- Translate "legalese" into English.
- Use a variety of methods and examples.
- Start where students are, and relate your presentation to their world (eg. a story involving young people and the law in yesterday's newspaper or on TV
- At beginning, briefly tell students about your work and explain goals of your visit

DON'T

- Lecture at students.
- Use legal jargon.
- Try to cover a broad range of topics in one class
- Talk down to students
- Tell a lot of "war stories."
- Read a prepared sspeech
- Let one or two students dominate the discussion

- Encourage questions
- Be realistic about the legal system (Note its weaknesses as well as its strengths, and show how students can improve it)
- Let students see you as a real human being (Share your interest, concerns, and satisfactions, but don't bore them with details of your specialty)
- Feel at ease, they will like you

- Feel you must defend everything about the operation of the legal system (An unrealistic, idealized portrait of the system can increase student cynicism; a thoughtful, balanced presentation should increase understanding)
- Give advice on individual legal problems

Reprinted from A Resource Guide for Lawyers and Law Students for Effective Classroom Use prepared by Resource Center for Law-Related Education, St. Louis. Used with permission.

# Twelve Hints for Lawyers

### by Leslie A. Williamson, Jr.

During the past several years, I have addressed several hundred Connecticut public school students on student rights and responsibilities. My discussions with these students have been an educational experience for me and, I trust, for the students.

Based upon my "hit and run" classroom experiences, I was asked to prepare some hints for members of the Connecticut bar on talking to public school students. The following, not in any particular order, are my suggestions.

1. *Know Your Subject*
   This is an obvious hint but nonetheless an extremely important one. Spend some time reviewing material prior to addressing students. Don't underestimate the breadth of their knowledge, their awareness of the law and their interest in the law.
2. *Have a Plan but be Prepared to Vary from It*
   Before you walk into the classroom, you should know what you want to say and how you are going to say it. Establish a presentation outline. (See suggested procedures for teaching search and seizure, pages 9-11.) However, the more interest you generate, the more probable it is that you will get "off track." Don't be afraid of this but don't put yourself in the position where you are unable to get back on track.
3. *Stress Responsibilities as well as Rights*
   You are a guest of the local board of education. The role of your host is to provide students with an education. Your discussion will be integrated within the general goal of the board. Therefore, remember that you are in the school as a lawyer-educator, not a student advocate. Your presentation should stress responsibilities as well as rights. Don't forget to highlight the responsibilities of a board of education.
4. *Control the Classroom*
   Don't expect a teacher to control the classroom for you. When you are in front of the class, you will be tested – on you knowledge of the subject and your management of the students. If a student misbehaves, do something – don't ignore the situation. Don't wait for the teacher to act because, oftentimes, the teacher won't.
5. *Talk with the Students, Not at Them*
   Most students are interested in the law. They will engage in meaningful discussion if given the opportunity. Give them that opportunity! While you may want to spend the entire period lecturing, it is strongly recommended that you don't.
6. *Don't Act Like a Lawyer*
   Certainly you should not take this hint too seriously. However, remember you are not addressing a judge but rather a group of students. Talk with them in words they can understand and take time to explain words or concepts which might not be readily known to your audience. Integrate concepts.
7. *Don't "BS" the Students*
   If you know the answer to a question, answer it. If you don't, tell the students that you don't. If you try to "BS" the students they will know it very quickly and your credibility will be lost.
8. *Use Hypotheticals*
   Use examples to illustrate points you are trying to make. Develop hypotheticals from your imagination or from recent court decisions.
9. *Watch Your Time*
   As interesting as you will be, most of the students' attention span will parallel the class schedule. When the bell rings, they want out! Know when the class is over and time your presentation accordingly.
10. *Work the Class and Work with the Teacher*
    I never lecture, nor do I stand in one place. Move around, interact with students, get each one involved.

    Talk with the teacher before class to determine which material should be emphasized, the background of the students, and what will be done with the subject matter once you leave.
11. *Don't Accept What "Is" – Discuss Why It "Is"*
    Students will often base answers on personal experiences or school policy. What "is" may not be correct. Challenge students to determine why something "is" and ask whether what "is" is appropriate.
12. *Don't Get Caught in the Middle of a School Controversy*
    Students will often ask you to determine whether actions by a teacher or administrator are appropriate. Don't get placed in the position of making a judgment on the appropriateness of action taken by an educator or on a pending issue. Try to articulate both sides of the issue.

Excerpted with permission from LRE Project Exchange, Vol. 1, No. 6 (Spring 1986), A publication of the ABA's Special Committee on Youth Education for Citizenship

ERIC®

Clearinghouse for Social Studies/Social Science Education
2805 East Tenth Street, Suite 120
Indiana University
Bloomington, Indiana 47405 (812) 335-3838

ERIC Digest EDO-SO-88-6 June 1988

# Law-Related Education in Elementary and Secondary Schools

by Carolyn Pereira

Law-related education (LRE) in elementary and secondary schools has grown remarkably since the 1970s. A nationwide curriculum survey (Hahn 1985) reveals that, since 1975, LRE has been added to the curriculum in more than half of the forty-six states involved in the study. Respondents in Hahn's study (state-level curriculum specialists and supervisors) mentioned LRE more frequently than any other curriculum theme as new to the social studies program since 1975. They also ranked LRE fourth as a priority in social studies education; it ranked eleventh in 1975.

It appears that teaching and learning about law in elementary and secondary schools is an important trend in social studies education. This ERIC Digest treats (1) the meaning of law-related education, (2) reasons for including LRE in the curriculum, (3) ways to include LRE in the curriculum, and (4) characteristics of effective LRE programs in elementary and secondary schools.

**What Is Law-Related Education?** Education for citizenship in a constitutional democracy, not specialized legal education, is the main point of LRE in elementary and secondary schools. Given the fundamental place of law in our American society, every citizen needs to know how the legal and political systems function, how the law affects them, and how they can affect it.

In 1978, major leaders in LRE described their field for a federal government report. They defined LRE as "those organized learning experiences that provide students and educators with opportunities to develop the knowledge and understanding, skills, attitudes and appreciations necessary to respond effectively to the law and legal issues in our complex and changing society" (Study Group on Law-Related Education 1978). In line with this definition, central ideas of LRE programs pertain to why certain legal procedures have been established and how they work in resolving disputes.

**Why Should LRE Be Included in the Social Studies Curriculum?** Four reasons for including LRE in the curriculum are (1) development of knowledge, skills, and attitudes needed for citizenship, (2) prevention of delinquency, (3) growth of student interest in the social studies, and (4) provision of breadth and depth to education in the social studies.

1. *Development of Citizenship.* Law-related education provides young people with knowledge, skills, and attitudes necessary for informed, responsible participation in our American constitutional democracy. LRE clearly and indisputably increases students' knowledge of the justice system, government, and the rights and responsibilities of citizenship in a constitutional democracy. There also is evidence that LRE contributes to development of skills in civic participation, decision making, and critical thinking. Finally, positive attitudes about the law, the justice system, and responsible citizenship may be enhanced through LRE programs. (Hunter 1987).

2. *Prevention of Delinquency.* A study conducted by the Social Science Education Consortium and the Center for Action Research indicates that LRE programs, when properly conducted, can reduce tendencies toward delinquent behavior and improve a range of attitudes related to responsible citizenship (Little and Haley 1982). For example, successful students of LRE programs are less likely to associate with delinquent peers, use violence as a means of resolving conflict, and refrain from reporting criminal behavior to authorities.

3. *Growth of Student Interest in the Social Studies.* Content of LRE programs is directly related to the lives of students. The variety of interactive methods of instruction (e.g., small group work, mock trials, simulations, case studies) seem to involve students positively in the learning process. Thus, law-related educators tend to report that students seem to "value LRE classes as relevant, useful, and interesting; that the classroom interaction is rewarding—offering students who had difficulties mastering the subject matter of other courses opportunities to participate successfully" (Hunter 1987, 55). Heightened interest and positive attitudes of students in LRE programs may transfer to other courses in the social studies.

4. *Provision of Breadth and Depth to Education in the Social Studies.* Law-related concepts and facts are necessary to the understanding of history, government, and economics—subjects that are integral to education in the social studies in elementary and secondary schools. Sources of law, functions of law, legal processes, legal roles, and legal principles (e.g., justice, equality, authority, freedom, order, etc.) are essential elements of the social studies curriculum. Thus, LRE is a necessary component of a sound social studies curriculum.

**How Does LRE Fit into the Curriculum?** There are three obvious approaches to inclusion of LRE in the curriculum (Naylor 1984):

- Use of special events about the law.
- The special unit or course on LRE.
- Infusion of LRE into various standard courses.

Special events, such as Law Day, annually provide opportunities to draw attention to LRE and to provide special programs. Teachers might invite lawyers to participate in classroom or school-

---

Carolyn Pereira is executive director of the Chicago Office of the Constitutional Rights Foundation.

wide activities. Other special events include mock trial competitions, field trips to courtrooms, and essay contests.

A separate unit or course on LRE is often included in the secondary school curriculum. Separate units typically appear in government and civics courses. Law and citizenship courses are also offered as electives in many schools. In some schools, there is a required LRE course. Separate units on law are often found at various levels in the social studies curriculum of elementary schools.

The infusion of LRE into standard courses in the social studies is common. Courses in American history, world history, and government are the most likely subjects for infusion of significant content about the law.

Over the short term, it appears that a semester course on LRE makes a positive difference in knowledge, skills, and attitudes. However, some law-related educators believe that the preferred approach is systematic infusion; they contend that a carefully-integrated strand of LRE throughout the elementary and secondary curriculum will yield the best results in terms of the quantity and quality of instruction.

**What are the Characteristics of Effective LRE Programs?** Effective LRE programs are distinguished by at least five characteristics, which are listed below.

1. *Extensive Interaction Among Students.* Teaching strategies that foster interactive and cooperative learning among students are keys to development of civic participation skills and positive attitudes about LRE and responsible citizenship (Slavin 1980). Examples of these teaching strategies are small group work, simulations, role-play activities, and mock trials.

2. *Realistic Content that Includes Balanced Treatment of Issues.* Realistic and fair treatment of issues is an essential component of effective law-related education. So is critical thinking about all sides to controversies. If our legal system is presented as flawless or infallible, students will doubt the credibility of the teacher and the practicality of the content. By contrast, if only cases in which the system has failed are presented, students will be less likely to view the law as a positive tool for maintaining social order and justice. A balance should be sought between respect for the law and constructive criticism about its application in specific cases. There should also be a balanced treatment of all sides to issues in legal cases.

3. *Use of Outside Resource Persons in the Classroom.* Interaction with a variety of adult role models who work within our legal system adds credibility and reality to the curriculum and is a powerful influence on development of positive student attitudes toward the law. Appropriate use of resource persons in the classroom (e.g., lawyers, judges, police officers, legislators, etc.) is strongly associated with increased student interest in LRE, positive responses to teachers and the school, and shifts from delinquent to nondelinquent peer associations. Of course, these adult role models should exhibit behaviors sought in students and be prepared in advance to make contributions to the course that are consistent with the objectives of LRE.

4. *Strong Support for LRE by the Principal and Other Important School Administrators.* A key to successful implementation of LRE in schools is strong support by administrators, especially the school principal. Supportive administrators can aid LRE by organizing opportunities for peer support, rewarding teachers for outstanding work, helping teachers explain and justify the LRE program to people in the community outside the school, and providing opportunities for staff development in knowledge and skills needed to carry out LRE programs. It is difficult or impossible to establish a worthwhile LRE program in the face of indifference or opposition by important school administrators.

5. *Systematic Staff Development in LRE.* The effectiveness of LRE programs depends upon the knowledge and skill of teachers. In addition, positive attitudes about LRE on the part of teachers and their colleagues are very important to successful implementation of LRE in a school. Development of necessary knowledge, skills, and attitudes among teachers can be achieved through systematic and extensive staff development activities. Successful staff development programs provide these benefits to teachers:

- An understanding of and commitment to the rationale, goals, and objectives of LRE.
- Experiences in working with high-quality lessons so that they understand how and why they work.
- Practice in evaluating and modifying materials to gain skill in selecting and adapting content and methods to fit local educational objectives.
- Practice in teaching strategies associated with successful LRE programs.
- Opportunities for constructive "feedback" about performances in teacher training sessions.

In conclusion, successful LRE programs involve students actively in the learning process in ways that reflect a high regard for each person. Reflection, deliberation, and discourse are valued and practiced systematically. And the development of knowledge and character are pursued in concert, as equally important elements of responsible citizenship in our constitutional democracy.

**References and ERIC Resources**

Following is a list of resources including references used to prepare this Digest. Those items followed by an ED number are in the ERIC system and are available in microfiche and/or paper copies from the ERIC Document Reproduction Service (EDRS). For information about prices, write EDRS, 1900 Wheeler Avenue, Alexandria, Virginia 22304 or call 1-800-227-3742. Entries followed by an EJ number are annotated monthly in CIJE (*Current Index to Journals in Education*) which is available in most libraries. EJ documents are not available through EDRS; however, they can be located in the journal section of most libraries using the bibliographic information provided below.

Gallagher, Arlene F. "How Law-Related Education Fits Into the Curriculum." THE INTERNATIONAL JOURNAL OF SOCIAL EDUCATION 2 (Autumn 1987): 37-44. EJ number will be assigned.

Hahn, Carole L. "The Status of the Social Studies in Public Schools of the United States: Another Look." SOCIAL EDUCATION 49 (March 1985): 220-223. EJ 315 969.

Hunter, Robert M. "Law-Related Educational Practice and Delinquency Theory." THE INTERNATIONAL JOURNAL OF SOCIAL EDUCATION 2 (Autumn 1987): 52-64. EJ number will be assigned.

Little, Judith Warren and Frances Haley. IMPLEMENTING EFFECTIVE LRE PROGRAMS. Boulder, CO: Social Science Education Consortium, 1982. ED 233 928.

Naylor, David T. INCORPORATING LAW-RELATED EDUCATION INTO THE CURRICULUM: APPROACHES, ISSUES, AND CONCERNS. Paper presented at the American Bar Association's Youth Education for Citizenship Annual Leadership Conference, San Francisco, CA, November, 1984.

Slavin, Robert E. "Cooperative Learning." REVIEW OF EDUCATIONAL RESEARCH 50 (1980): 315-342. EJ 229 101.

Study Group on Law-Related Education. FINAL REPORT OF THE U.S. OFFICE OF EDUCATION STUDY GROUP ON LAW-RELATED EDUCATION. Washington, DC: U.S. Government Printing Office, 1978. ED 175 737.

This publication was prepared with funding from the Office of Educational Research and Improvement, U.S. Department of Education, under contract no RI88062009. The opinions expressed do not necessarily reflect the positions or policies of OERI or ED.

BAR/SCHOOL
PARTNERSHIP
PROGRAMS

A publication of the ABA's
Special Committee on Youth
Education for Citizenship

Spring 1986
Volume 6
Number [illegible]

LRE PROJECT EXCHANGE

# Sure-Fire Presentations

### by Arlene Gallagher

The purpose of this article is to give lawyers who are planning to work with students some practical suggestions that will make their presentations more effective. These "tips" should be helpful whether you are planning to visit a school one time on Law Day or will be going several times. Many of the following suggestions came from classroom teachers who have had extensive experience working with lawyers in the schools. Other suggestions came from lawyers. Though my examples are drawn from elementary schools, the tips should work well for all students.

## Getting to Know Your Client(s)

If possible, meet with the classroom teacher before you go to the school, or at least have a telephone conversation to discuss your presentation and the class you'll be visiting. You might consider sending this article to the teacher and use it as a basis for your discussion. More than likely the teacher will have additional suggestions or might want to modify some of these depending on the class you'll be visiting.

An initial meeting is usually about what the lawyer plans to do but you will be even more effective if you also get some information about the class. Classes, as well as students, have a kind of personality. Ask questions about the class. Are they quiet? Active? Noisy? How is their attention span as a group? Are there certain students who always speak up or others who never do? It's easy to get monopolized by the very bright, verbal student and ignore the quiet child who may have an interesting point to make or question to ask.

The classroom teacher can be very helpful to you during your presentation, so don't hesitate to ask for assistance. You don't have to "be the teacher." Pat Jarvis, a fourth grade teacher in Rhode Island, says she feels free to interrupt a class discussion to clarify a student's question or suggest that the lawyer spend more time on a legal point. The teacher can work with you and handle any management or discipline problems. If you want students to sit on a rug with you, the teacher knows how to get them there. Inviting 30 nine-year-olds to come to the front of the room can cause a stampede.

## Pacing the Presentation

Children can't sit and listen as long as adults, so consider the students' attention span. Work out some hand signals with the teacher ahead of time so that you can get cues if you're going too fast, or if you need to alter the pace. Judy St. Thomas, Director of the Rhode Island Legal Educational Partnership Program, recommends that if you have the time it would be very helpful to visit the class and observe before you do your session. Ask to see a law-related or social studies lesson, or one in which the students will be discussing something that touches on law or citizenship. This will give you a chance to hear their vocabulary level and how they verbalize their thoughts. It will also give you a chance to observe the teacher's style. All teachers are different, and their styles vary just as much as lawyers'.

Finally, ask the teacher to have name tags either on the students or on their desks. You will be amazed at how much more effective you will be when you use a child's name. Imagine how clients would feel if you didn't know their names.

---

**Teaching About the Law**

This special issue of *LRE Project Exchange* is packed full of help for lawyers who volunteer to teach youngsters about law and the legal process.

*LRE Project Exchange* is produced by the American Bar Association's Special Committee on Youth Education for Citizenship, as part of its efforts to build better bar-school partnerships. For more information about how the ABA can help you, contact Charlotte C. Anderson, Project Director, 750 N. Lake Shore Drive, Chicago, IL 60611, (312) 988-5731.

This issue is made possible by funding from the Office of Juvenile Justice and Delinquency Prevention (grant #85-JS-CX-0003), Office of Justice Assistance, Research and Statistics, U.S. Department of Justice, and the Law-Related Education Office of the Department of Education (grant #G008510113). Points of view or opinions in this document are those of the authors and do not necessarily represent the official position or policies of the Department of Justice or the Department of Education.

Many of the ideas and strategies contained here were originally published by the American Bar Association's magazine, *Update on Law-Related Education*, in its Winter, 1986, edition. The complete issue, which includes many additional strategies for lawyers teaching at all grade levels, is available from the ABA at the address listed above.

---

*Copyright © 1986 American Bar Association*

BEST COPY AVAILABLE

*Produced by the ABA Press*

Reprinted with permission of the ABA's Special Committee on Youth Education for Citizenship

Whatever topic or plan you come up with, try it out. Borrow some children if you don't have any of your own, but use children close to the age of the students you'll be meeting in school. Three years age difference doesn't matter much when you're thirty-five, and the difference is even less if you're sixty-five, but a seven-year-old is *very* different from a ten-year-old. Fifteen minutes with a small sample of children will be time well spent.

### Time: The Limited Resource

Everyone's time is valuable. You want to make the best use of time possible, and scheduling a trip to an elementary school can be a problem. Most teachers are willing to be as flexible as possible, and they'll rearrange their teaching schedule to fit your availability if they can. However, don't agree to go during recess or lunch, two very important activities to children – and adults. Remember that when you're calling to schedule a visit the teacher probably won't be able to talk to you while class is in sesson. Try to call before or after school, or ask if you can call the teacher at home.

Thirty to forty-five minutes is about the maximum length of time to spend with elementary students, and that should include as much participation by them as possible. Once you have made the appointment, try very hard to keep it. Even twenty minutes late might mean that there's no point in going because the class is by then scheduled for something else. If you have to cancel, call as soon as you know that you can't make it. If you have to call that day, even a couple of hours warning will make it easier for the teacher to plan another lesson.

*Arlene Gallagher is an associate professor of education at Elms College in Chicopee, Massachusetts, and a lecturer at Boston University. She is an elementary specialist who has written many books and articles on law-related education for younger students.*

### Your Place or Mine

Most lawyers think working with elementary students means going to the school. Marj Montgomery, a teacher in Newton, Massachusetts, says not to overlook the glamour of having students come to your office, or meeting them in court. While you may think that a lawyer's office would be boring, it won't be to the children. Sitting at a lawyer's desk, or in a jury box, or taking the judge's chair for even a minute does a lot for a student's perspective.

Marj says that a big treat for her eighth graders is to go to Jay Flynn's office at Parker, Coulter, Dailey and White to discuss a mock trial they're preparing. They go in small groups or four or five, and this saves Jay's time because he doesn't have to travel to and from the school. Sixth, fifth and some fourth graders are perfectly capable of taking a mini field trip on their own. If you have students come to your office, don't have your calls held. They'll understand more about what you do all day if they see you doing some of it.

### Choosing Your Topic: How Much Can You Cover

You probably know the story about the six-year-old girl whose mother was an engineer and father was a lawyer. One day she asked her mother a question about the law. "Why are you asking me," her mother said. "Daddy is the lawyer. Ask him. I know he'd love to talk to you about the law." "Yes," said the six-year-old, "but I don't want to know *that* much about the law."

Accept the fact that you won't be able to tell the class everything about the law. Try to focus on one or two legal principles or procedures and be satisfied that you will probably only be able to introduce these ideas, not cover them with any thoroughness.

A good topic is often one that relates to what students are currently studying, or one that interests them, or one that they can apply to their own lives. The classroom teacher may not give you a topic, and in that case you have the luxury, and the difficulty, of selecting one. This issue of *Exchange* has several ideas. If you are reading a photocopy of this article given to you by a colleague, coerce that friend into letting you borrow the whole issue. Be sure to read the article by Lloyd Shefsky (p. 5) which describes a classroom experience in vivid detail.

In Shefsky's strategy, the prop is inspired: chocolate bars. Candy will always capture a child's interest. Shefsky uses the prop very effectively, but you can use all kinds of props to enhance your presentation. The everyday trappings of your trade such as law books, contracts, or wills can be used to illustrate the point that laws are written down. A visual picture of the problem you are discussing will help children focus on the facts, identify the parties involved and consider the location of the problem.

Don't hesitate to use real anecdotes. Children like to hear about real things that happen to real people, so anytime you can make a point with an anecdote, do it. You

can "borrow" your colleagues' anecdotes if you can't think of any interesting ones. Be ready to be open and frank with children, and don't be surprised if, when you say "Any questions," they ask you some personal ones. A favorite is: How much money does a lawyer make?

### Modifying the Socratic Method

Use your education and training as a lawyer. It will enable you to ask questions in a way that leads students to think through a problem, analyze it, generate potential solutions, and consider the consequences of those solutions. Your skills as a negotiator can lead students to resolve conflicts in a manner that considers various viewpoints and results in consensus decision-making. If you can help children to acquire these skills, they can use them in their daily lives. Using this problem-solving approach, a legal principle or procedure can be explained in a context, not as an abstract idea.

The same principle or procedure can be illustrated in a number of contexts. For example, due process and our common law heritage contain basic ideas even small children can readily understand:

1. There should be rules made in advance, and there should be fair procedures to enforce them;
2. There should be a role for the people in determining the rules and in enforcing them.

After selecting the problem, try to think of ways in which you can have the students apply these or other basic points. This will make your time with a class much more valuable because the teacher and students can continue to apply the ideas you have presented in other contexts.

The example included on page 4 shows how one lawyer works with a class of second graders. The activity can be done with older students, but a younger class has been chosen here to demonstrate that the law can be discussed with very young children. They may use simpler vocabulary, but young children can deal with complex ideas such as equality and justice.

### Interaction: Rolling up Your Sleeves

Strive for some informality in the classroom so that children will feel comfortable talking to you. All of the teachers I spoke to said, "Tell the lawyers not to talk down to the children but tell them to talk on the children's level." Good advice but hard to know how to follow.

Try to take the students' perspective. You will probably be taller than most of them and you'll look like a giant to first graders. It's hard to interact with a giant. You can make them more comfortable by being physically on their level. Sitting on the floor or on a chair in a circle helps a lot with young children. Sitting on a desk helps with older students. Try to position yourself so that your eye level is the same as theirs'.

### A Rolling Stone (Or Ham) Gathers No Moss

If the students are seated at desks and it's obvious that you are going to have to stand, don't stay at the front of the room. This position encourages you to fall into a lecture style which is ineffective with children, except for very short periods of time. Move around. Go up and down the aisles. Make direct eye contact with the student who is speaking. If you're a person who can "ham it up," do it.

Use the chalkboard, the oldest teaching tool. Don't be afraid to use a legal term like "habeas corpus," especially with older students. They'll love it. Just be sure to write it (print it for young children) on the chalkboard and define it.

A good way to break out of the lecture mode is to get the students talking. You will need to direct the discussion, though, or you might find yourself listening to endless stories about pets, new babies and favorite TV shows. You want to encourage discussion but keep to the topic. Don't be afraid to politely interrupt a child or to ask children to put their hands down while you're making a point.

Most interaction in classrooms goes from teacher to student and student to teacher, but with little student to student communication. You can encourage this very easily. A simple, "Jimmy, what do think of what Mary just said?" will help.

Have the children role play whenever possible. Lloyd Shefsky uses this technique very effectively with the chocolate bar problem. In the activity I've presented on page 4 the teacher and lawyer have the students pretend to Harry and Bill. Ask the class what they would decide if they were one of the parties involved, or if they were a judge or a member of a jury. After they have expressed one viewpoint tell them to switch. For example, "All of you who were Harry the Tap Dancer, now you're poor Bill who can't sleep at night because of all the tapping above him."

### The Price of Success

If your visit goes well, you will probably be invited to come back. The good news is that it will take less time to prepare for your second appearance and you can use the same plan if you're meeting with a different group of children. Using the same plan several times gives you the advantage of being able to modify and improve based on your experience. I know several lawyers who would like to be able to try a case a second time, and this is your chance.

The not-so-very-bad news is that all of this does take time, but the compensation comes in the form of satisfaction and the thank you notes you'll receive from children; fees well worth the effort.

Peter Hannan

12

# GUIDELINES FOR ROLE-PLAYING

Present the problem or situation.
Students must be given enough information to play the roles convincingly.

Get the class involved as quickly as possible.
Don't spend a lot of time on the introduction.

Assign roles or solicit volunteers.
If you arrange the students in pairs or trios, using the third student as an observer, an entire class may participate even if there are only two roles.

Role reversal can be a useful device when students appear unsympathetic to the opposing viewpoint, or when a student has been stereotyped by peers.

The following questions may be useful for focusing the follow-up discussion:

- Were the players realistic?
- Was the problem solved? Why or why not, and how?
- What were the alternative resolutions?
- Is this situation similar to anything you have personally experienced?
- How did you feel playing that role?

## Precautions

Keep it simple. Initial role-playing activities should be simple, but can become increasingly complex.

Don't belabor the introduction. Role-play first and answer questions later.

Allow time to role-play several incidents; students will become less self conscious and more aggressively involved with each incident.

Don't expect polished performance.

Don't worry about losing control of the class. In may be a bit noisy, but if you stick to the procedure, the noise will be productive.

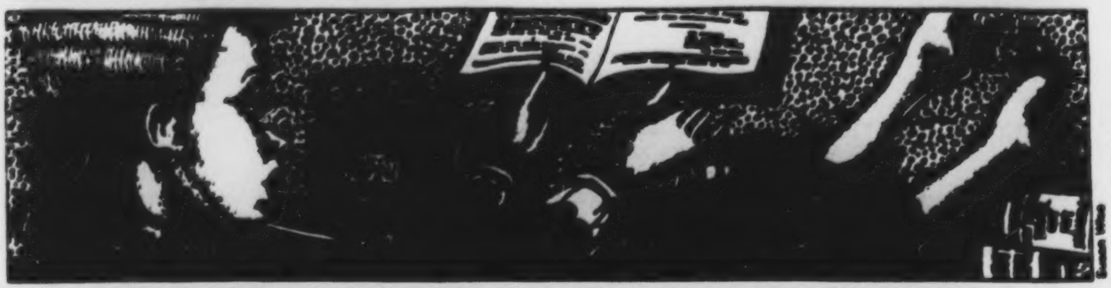
Reprinted from A Lawyer in Every School, A Program of the New Hampshire Bar Association, Elementary Grade Level Packet, with permission of the New Hampshire Bar Association.

Reprinted with Permission from Update on Law-Related Education, Winter, 1989, a publication of the American Bar Association Special Committee on Youth Education for Citizenship

# Law in Toyland

A Mindwalk Classroom Strategy/K-4

Jan Robey Alonzo and Steve Jenkins



Here's a sure-fire attention getter for teachers and attorneys working with elementary grades. This activity is a variation on the effective mindwalk strategy (i.e., Brainstorm—"What have you done today that involves the law?" The list of laws is almost endless.). Experience has demonstrated that "Toyland" is a sure-fire success.

## Goal

As a result of participating in this activity, students will increase their understanding of the impact of law in our everyday lives.

## Materials Needed

A pillow case or tote or shopping bag full of toys (e.g., stuffed animals, baby and teen dolls, cars and/or trucks, planes, a variety of guns, a baseball glove or other sports item, and whatever else you can borrow from a young friend).

## Procedures

This is an ideal activity for an attorney. The teacher can team with the attorney during the brainstorming and debriefing.

The teacher should introduce the attorney. It would be most helpful if the teacher provides name tags for the students. The attorney may give a brief overview about his or her job. Get the students involved immediately by asking them, "Do you know what a lawyer does?" The attorney should call students by name as they give responses.

Next, the attorney should ask the students, "How many of you like toys?" (All hands will go up.) Tell them they are going to help you talk about laws using your bag of toys. Please note that the students are likely to identify laws not listed below and/or laws that only apply in some jurisdictions—these responses can lead to further discussion about lawmaking by different government bodies. As the students respond, the teacher can write the responses on the chalkboard.

Reach into your bag and select a toy that is likely to provoke some immediate, enthusiastic responses. Here are some examples.

### CAR

"Imagine that this is a real car, and you are a passenger in the car. What would be some laws you would need to follow?"

- Seat belt laws ("Buckle up for safety")
- Safety inspections ("How do you know if the car is safe to drive?")

"If you were riding in the car, what laws might apply to the driver of the car?"

- Driver's license requirement

"What would be some laws the driver would have to obey?"

- Speed limit laws
- Traffic signals
- Stop signs

"What do you need to make the car operate? Gas. Are there any laws about gas?"

- Regulations requiring unleaded gas
- Gasoline taxes

If you are speaking in a state requiring infant car safety seats, you might ask:

"Where would you place a young baby riding in the car?"

- Car seat

### MOTORCYCLE (with helmeted rider—if you can find one)

You might ask, "Do motorcycles have to follow laws like those applying to cars? What are some examples?"

Students will probably identify some of the laws already listed—just gesture to the chalkboard and affirm each response.

"What about helmets for people on motorcycles?"

- Helmet laws—Answers will vary depending on jurisdictions. You may wish to talk about the differences in state laws and the importance of state lawmakers. Of course, this applies to other vehicular laws—even minimum-age requirements to qualify for driver's licenses. Students always like to discuss at what age you can drive. In addition, some states are considering requiring that young people under age 18 provide proof of attending school if they wish to qualify for a license when they are 16 or 17.

### BICYCLES

As a follow-up, you might discuss laws and ordinances young people need to know as bike riders.

### BABY DOLL

"If this were a real baby, what legal document would the baby have soon after it is born—each of you has one?"

- Birth Certificate—giving a baby a name is then legally recorded.
- Laws involving baby care may also be discussed (e.g., doctors who are licensed to practice medicine).

"Who is legally responsible for taking care of the baby?"

- Parents or legal guardians

"What are some things parents must provide for their children?"

- Basic necessities (food, shelter, clothing, and health care—some might say education, and then you can discuss compulsory attendance laws)

"What might happen to parents who fail to provide these basic necessities?" or "What might happen to parents who mistreat their children?"

- Child abuse and neglect laws

### TEENAGE DOLL (You can use Barbie or Ken dolls to represent teenagers)

"What are some laws affecting teenagers?"

- School laws
- Curfew laws
- Status offenses (e.g., those who run away)

You may wish to do a variation on this, "What if Barbie were eighteen, can she get married, purchase a car, live on her own, etc.?"

- Marriage laws
- Contract laws

### STUFFED ANIMALS (e.g., a dog)

"If this were my real pet dog, what laws or rules would I need to follow in taking care of my dog?"

- Licensing—dog tags, shots
- Leash laws
- Pooper Scooper ordinances
- Animal care statutes (e.g., anticruelty laws)
- Statutes governing the use of animals for lab experiments (i.e., antivivisection laws)

If you have a wild stuffed animal, then you can discuss laws governing hunting of wild animals, protection of endangered species, etc.

### PISTOL

"If this were a real gun, could anyone legally carry it at any time?"

- Handgun registration laws or local ordinances
- Laws concerning carrying a concealed weapon

"What might happen to someone caught by the police using the pistol in a robbery?"

- Armed robbery statutes
- Armed criminal action laws
- Felonies and criminal prosecution, including the possibility of a long prison sentence (mandatory sentencing statutes)

### RIFLE

"If this were a real rifle, what would be some legal uses for the rifle—what can I use it for?"

- Hunting laws (including licenses)
- Target practice in an appropriate or safe area
- Safety laws—laws regarding carrying weapons unloaded

### HIGH TECH WEAPONS

"If this were a real laser gun or bazooka, could anyone use it?"

- Constitutional establishment of armed forces (Article I, Section 8) and state militias-National Guard (Amendment 2)
- Federal laws regulating the sale of certain types of weapons

### PLANES

"What if this were a real plane? Are there any laws governing planes? Can they fly anywhere?"

- Air safety laws
- Regulations requiring baggage to be searched and persons to submit to metal detector searches, as well as other antiterrorist laws
- Federal Aviation Agency
- Civil Aeronautics Board
- Air traffic controllers
- Noise level regulations (anti-sound-barrier statutes, airplane noise around airports)

If the plane is a military aircraft, then you may highlight the laws that are similar to those governing high tech weapons.

### BASEBALL GLOVE OR OTHER GAME GEAR

"What are some rules I might need to know to use this in a game?"

- Rules. Rules are similar to laws. Discuss the importance of having rules.

### OTHER TOYS

Ask students to think of other toys that can teach us about laws. For example, a doll house might spark discussion about building laws, buying a home, laws governing utilities and household sanitation and safety.

## Follow-Up Activity

Have students do this lesson at home. Show parents toys and repeat the process at home. See how many laws their parents can identify. Students may then report back to the class and compare parental responses.

### VARIATION

Create a bulletin board with pictures of toys and describe laws related to the pictures.

---

*Jan Robey Alonzo is an associate in the St. Louis office of Thompson & Mitchell and serves on the Law-Related Education Committee of the Bar Association of Metropolitan St. Louis. Steve Jenkins is Law-Related Education Director of the Bar Association of Metropolitan St. Louis. They were assisted by Nancy Henry of the bar association in preparing these activities for publication.*

15

# LAW IN YOUR LIFE

## Background

Few of us stop to think about the effect laws have on our daily lives. Laws protect our freedoms and, in some ways, they restrict our actions while protecting others' rights. This brainstorming activity can become quite involved as students awaken to the extent to which laws affect them.

The brainstorm is a very useful classroom strategy because all students, regardless of their level of academic achievement, can participate equally. It is nonthreatening because no evaluation is allowed, and it does not require prior preparation. In addition, a significant amount of information can be gathered quickly.

## Purpose

The purpose of this activity is to develop an awareness of the freedoms, protections, and restrictions resulting from the framework of laws which supports our society.

## Procedure

Post the "Rules of Brainstorming." These should be explained briefly.

Tell students that the topic for this brainstorm is "How many ways have you been in contact with the law since you got up this morning?"

Tell students to call out their ideas (no hands). Post these as they are called out.

Participate in the brainstorm if it is obvious that students have not gotten the idea. For example:

a) "I listened to the radio."
b) "I brushed my teeth."
c) "I walked the dog."
d) "I looked at my watch."
e) "I spent some money."

Keep going until it is obvious that nothing new will be said, but be willing to allow enough time for everyone to get into the swing of things.

Match all of the ideas to appropriate laws or enforcement agencies. For example: a) F.C.C., b) Pure Food and Drug Act, c) leash law, d) standard time, e) banking. Some of the ideas may be family rules, some may be natural laws, and some may be religious tenets. If the list contains many examples from various sources, students might categorize them by source.

One alternative would be to focus on civil and criminal law and classify the ideas into these two categories. Students are often surprised that generally they are more often in contact with the social aspects than with the punitive aspects of the law. Another alternative might be to lead a discussion on the effects of breaking some of the laws they mention.

## LAW IN YOUR LIFE

### Rules of Brainstorming

1. Say anything that comes to mind.
2. Piggybacking on the ideas of others is good.
3. Don't evaluate or criticize what others say.
4. When you can't think of anything else, wait a minute and try again.

### Ideas to Get You Started

1. Were you born?
2. Do you go to school?
3. Do you ride a bus to school?
4. Do you walk to school?
5. Does someone in your family have a driver's license?
6. Have you put money in a parking meter?
7. Do you belong to a club?
8. Have you eaten in a restaurant?
9. Do you play on a sports team?
10. Have you helped make rules for your family, your classroom, or a group to which you belong?
11. Have you been on the school safety patrol?

Reprinted with permission from A Lawyer in Every School, A Program of the New Hampshire Bar Association, Elementary Grade Level Activity Packet.

# NO PETS ALLOWED

## Background

"Rules are made to be broken." "That law doesn't apply to me." "That rule isn't fair, and I'm not going to obey it." We all occasionally question rules and laws. In this activity, students will question the reason for a particular rule, the interpretation of the rule, and the application of the rule.

## Purpose

The purpose of this activity is to have students consider all aspects of a given rule and how strictly it must be enforced. Students must "be the judge" in deciding whether to allow exceptions to the rule and be able to support their positions.

## The Fact Pattern

Mary lives in a building that has a big sign posted that says:

**NO PETS ALLOWED**

It is an apartment house in a big city. Most of the people in the building don't have children. Mary would like to keep some pets for friends who are going away for the summer. Her friends have a dog, a cat, a bird, four goldfish, and two gerbils. Mary must make a decision. She must tell her friends that she can keep the animals for them or she must tell them to look for someone else to keep them. The rule seems clear, but why do you think the landlord made the rule? Is it a good rule? Is it fair to everyone? Let's think about some instances that might change your opinion.

Would it make a difference if the pet Mary was asked to keep is large or small, noisy or quiet, in a cage or free to run?

Would Mary be able to keep the dog if she were blind and it was a seeing eye dog?

Mary has an ant farm left over from a science project for school. Will the landlord allow Mary to keep it?

One of Mary's friends will only be away for two days, another of her friends will be gone for a month. Should Mary be allowed to keep a pet for a vacationing friend for a few days, a week, a month?

Reprinted from A Lawyer in Every School, A Program of the New Hampshire Bar Association, Elementary Grade Level Packet, with permission of the New Hampshire Bar Association.

# NO VEHICLES IN THE PARK

"No Vehicles in the Park" is an effective activity for helping students to understand the functions of laws and the role of a judge in interpreting the law. Two variations are presented here.

## VARIATION 1

### Background Information

A basic value in American society is individual safety. Many rules and regulations arise because Americans believe that people in their everyday lives should feel they are reasonably safe from bodily injury. The following simulation is concerned with a statute that evolved because of people's concern for safety in a specific environment. The statute regulates behavior.

### Purpose

The purpose of this activity is to have students participate in the adjudication of several cases alleged to be in violation of a statute. Every participant plays the role of a judge. Individual cases are presented, and judges are asked to rule upon each one before determining whether a statute called "No Vehicles in the Park" has been violated. Violation of the statute carries a minimum fine of five dollars and a maximum fine of fifty dollars.

### Procedure

Announce to the class that every pupil in the room is a judge. Explain that there is a neighboring community where no vehicles are allowed in the park. You are going to present a series of cases that may be violations of that statute. After describing each case, you are going to call upon a different judge who will determine if a case is, in fact, a violation. Each judge will have to make a determination, based solely on the facts presented. Remind the students that the verdict can range from not guilty to a fine on a scale from five to fifty dollars. Be sure to identify each student as "Judge Smith" or "Judge Jones," in order to emphasize their roles.

## Cases To Be Considered:

### Case 1

An automobile drives through the park. It is stopped by a police officer. After checking license and registration, the officer asks the driver why she is driving through the park and if she knows about the statute prohibiting vehicles. The driver says she knew about the statute, but she was in a hurry to cross town and went through the park as a shortcut.

### Case 2

A garbage truck is stopped by a police officer for driving through the park. The driver states that he knows about the law, and that usually he does not drive into the park to pick up refuse. On this day, there was an unusual amount of garbage, and he couldn't carry it all by hand.

### Case 3

An ambulance is stopped by a police officer for driving through the park. The ambulance did not have its siren operating or its lights flashing. The driver explains that an accident had occurred, and the ambulance was called to pick up an old person. The person is believed to have had a heart attack. It would be unsafe to use the siren or lights with a heart-attack victim.

### Case 4

A group of bicycle riders from the Fresh-Air-Is-Fun Club are stopped by a police officer while cycling through the park. The cyclists say they are on a day-long bicycle outing from another town and are unfamiliar with the statute. Several members of the group argue with the officer, stating that the law is stupid because the paths are wide enough for riders and walkers.

### Case 5

This case involves a six-year-old girl who is riding her tricycle through the park. An officer stops her and tells her she can't ride her tricycle in the park. The little girl continues to ride, after telling the officer that it's a silly rule and she doesn't care.

### Case 6

An eighty-two-year-old woman is stopped by a police officer when she is seen riding through the park on her skateboard. The woman has remarkably acute vision and says she read the posted sign prohibiting vehicles, but claims that her skateboard is a toy, not a vehicle. The officer does not know whether a skateboard is a vehicle or not. The woman is brought to court so that a judge can render a decision.

### Case 7

A group of citizens in the community decides to place an old World War II army tank on a pedestal in the middle of the park. The tank will be transported on a flatbed truck. Before doing so a representative of the group calls the police department to ask if this is a violation of the statute about vehicles.

## Follow-up Discussion

**By the time you have gone through all the cases, the class should be asking questions about what the statute means and how a vehicle is defined. If not, you can add your own cases, including roller skates, wagons, wheelchairs, and other such things.**

**Conduct a discussion, using the following questions:**

1. Why would a community want a law about vehicles in the park?
2. What is the purpose of a park, and how does the statute protect that purpose?
3. Is the purpose of the park related to the purpose of the statute?
4. If you were legislators rather than judges, would you want to change this statute?

**Our legal system requires that a delicate balance be maintained among competing interests. In the functioning of government, the purposes of various institutions must be in balance with one another. It is important for students to see the relationships between the legislature, the judiciary, the executive, law enforcement, and the corrections branches. The following questions are designed to focus on these relationships:**

1. What is the purpose of each institution?
2. Why are the processes separate? Why shouldn't the lawmakers also be the law enforcers, for example?
3. It would certainly make life easier for police officers if they could issue appropriate punishment on the spot. What would be the dangers in operating this way?
4. What is society valuing by separating lawmaking from law enforcement?

# NO VEHICLES IN THE PARK

## Variation 2

### Procedure

1. Read or ask students to read the handout.
2. Tell students to decide individually which exceptions they would grant and why.
3. Divide the class into groups of four or five. Ask each group to decide on exceptions.
4. Vote on each case; for those the majority agree upon, have the class rewrite the law, so that all the exceptions they desire are included.
5. Debrief the lesson. Discuss interpretation and the need for clear laws.

"No Vehicles in the Park" Reprinted from A Lawyer in Every School, A Program of the New Hampshire Bar Association, Elementary Grade Level Packet, with Permission of the New Hampshire Bar Association.

# (HANDOUT)

## NO VEHICLES IN THE PARK

The town of Beautifica has established a lovely park in the city because the city council wished to preserve some elements of nature, undisturbed by city noise, traffic, pollution, and crowding. It is a place where citizens can go and find grass, trees, flowers, and quiet. In addition, there are playgrounds and picnic areas. At all entrances to the park the following sign has been posted: "No Vehicles in the Park."

The law seems clear, but some disputes have arisen over the interpretation of the law. Interpret the law in each of the following cases, keeping in mind the letter of the law as well as the intent of the law.

1. John Smith lives on one side of the town and works on the other side. He will save ten minutes if he drives through the park.
2. There are many trash barrels in the park, so that people may deposit all litter there, thereby keeping the park clean. The sanitation department wants to go in to collect the trash.
3. Two police cars are chasing a suspected bank robber. If one cuts through the park, he can get in front of the suspect's car and trap him between the patrol cars.
4. An ambulance has a dying car accident victim in it and is racing to the hospital. The shortest route is through the park.
5. Some of the children who visit the park want to ride their bicycles there.
6. Mrs. Thomas wants to take her baby to the park in his baby buggy.
7. A monument to the town's citizens who died in the Vietnam War is being constructed. A tank, donated by the government, is to be placed beside the monument.
8. Several of the town's citizens have made a living for several years by driving people around scenic spots in the city in an old-fashioned horse and buggy. They want to drive people through the park.

Reprinted with permission from A Resource Guide for Lawyers and Law Students for Effective Classroom Use, a publication of the Resource Center for Law-Related Education, St. Louis.

Copyright Steve Jenkins

## SCHOOL RULE: "DO NOT WEAR HATS HERE"

The school policy contains the following rule: "DO NOT WEAR HATS HERE"! This rule is posted in highly visible locations (i.e., classrooms, hallways, cafeteria, locker rooms, school busses, etc.) throughout the school. You are a new employee at this school and you have reviewed the school policy and you are aware of the no hat rule. The following twelve students are among the students you encounter on your first day of work.

School employees are responsible for enforcing school policy, like the no hat rule. Violations of this school rule by students may result in disciplinary action, such as detention, suspension and/or adjustment transfer. Which of the following twelve students would you refer to the office for violating the no hat rule, and why?:

1. Aaron is an Orthodox Jew who is wearing the traditional Yamulka.
2. Taffy has had a plate in her head since she was involved in an accident. She is embarrassed by it and wears a ski cap to conceal it.
3. Hank likes to dress in traditional macho outfits. He feels these costumes enhance his appearance and his appeal to the opposite sex. Today, Hank is wearing cowboy boots, fringed leather jacket, and a ten gallon Stetson.
4. Floyd, team quarterback, has on his entire football uniform including his helmet. Since the opening day of school is always celebrated with a pep rally, the team always dresses in full gear for the occasion.
5. James, one of only a few black students in the school, arrives with a knitted blue cap. His is self conscious about the texture of his hair and feels more comfortable with his cap on.
6. Mary was running late this morning. Her hair, still in rollers, is not yet dry. She plans to comb it out during Driver's ed. just before she sees her boyfriend, Ed, at lunch.
7. Fashionable Frances comes to school tastefully dressed in a brand new suit. An integral part of the ensemble is an attractive tam.
8. Betty Bouffant's hairdo obscures the view for others.
9. Alan contracted head lice while on vacation. His head has been shaved, smeared with medicated ointment and has been wrapped by the doctor in a turban-like bandage.
10. John Henry is wearing his baseball hat. He has had it on since June.
11. Stylish Susie takes great pride in her hair ribbons. Today's ribbon is large, sits on top of her head and has several yellow rosebuds protruding from it.
12. Hungarian Hannah, like her immigrant mother, always covers her hair in public with a brightly colored babuska.

Would you change the rule, "DO NOT WEAR HATS HERE"? Why or why not?

# Legal Procedure

## Teaching About Contracts/Grades K-4

**Lloyd E. Shefsky**

Slug Signorino

Can little children understand contracts? Should they be taught to understand contracts? You bet! My personal experience shows that certain rudimentary principles of contract law are understood intuitively by many, if not all, five-year-olds.

Here's a step-by-step outline for introducing lower elementary students to some of the main concepts involved in contract law as the "stuff" of attorneys' work. This material is introduced in a way that youngsters find exciting and interesting. The strategy is a role-play in which elementary students participate in negotiating a contract and resolving a dispute from knowledge they already possess and experience they already have.

The genesis of the plan presented below was an announcement by my five-year-old son that the parents of his kindergarten class were invited to explain what they did for a living. Parents were to be scheduled individually on different days.

How was I to explain to kindergartners the working world of an attorney? If few adults fully understand the legal issues of business law, how could I explain them to a class of five-year-olds, in spite of their above-average intelligence, sophistication, and positive orientation to the law?

### Choosing a Topic

The teacher of my son's class had recommended that I limit my presentation to a maximun of 30 minutes, preferably less. Because the attention span of elementary students is short, the presentation had to be both stimulating and concise. For this reason, I quickly rejected a description of a day in my working life as well as a description of a complicated and/or unusual case. (I am pleased to report that at the end of my 30-minute exercise, when attention spans were indeed beginning to show signs of waning, the teacher informed me that I had held class attention far longer than those parents relying on oration.)

There are additional constraints when addressing K-4s in contrast with older students. Limited life experience and substantive knowledge dictate a teaching exercise set up ahead of time within tight limits.

Contractual arrangements permeate our society, and disputes over these arrangements are everyday occurrences for attorneys and laymen. Children, too, enter contractual relationships whenever they go to a movie or borrow library books. Children negotiate simple contracts whenever they promise to relinquish one comic book for another or trade baseball cards.

Disputes may arise after contracts are consummated for a variety of reasons – one party cannot or will not fulfill the agreement or is perceived as not living up to all or part of the terms of the contractual agreement. In the example of the children's exchanged promises, a comic book may have missing pages.

A complex legal issue that frequently arises is known formally as a "mistake of fact." According to Black's Law Dictionary, a "mistake of fact" is an unconscious ignoring or forgetting of a fact relating to a contract, or a belief that something material to the contract exists or has existed when, in fact, it does not nor ever has existed. It is not, however, a mistake caused by a party's neglecting a legal duty. A "mistake of fact" can be mutual or not, each with differing legal results.

Negotiating a contract and then resolving a dispute over a mistake of fact was the focus that I chose for explaining my work as an attorney. This is a legal situation arising again and again in the real world of business and, indeed, everyday life. The next step was devising and planning an appropriate situation for "acting out," so that I could instruct my kindergartners by allowing them to participate.

### Planning Ahead

When legal professionals accept requests to contribute to law-related education projects, careful preparation is perhaps the most important prerequisite, just as it is for trial or negotiating a transaction. No matter how short and simple the instructive session is to be for the K-4s, *careful* preparation is vital. An ill-prepared speaker can fall back on *ad hoc* discussion and "thought" questions when facing high school students; you can't disguise lack of planning when instructing K-4s.

My preplanning for my son's class involved asking him about the "sweet-tooth" preferences of his classmates. I discovered that at least two of them were very fond of chocolate bars, but that one was devoted to plain chocolate and the other strongly preferred chocolate with nuts. It is advisable to know the likes and dislikes of several classmates ahead of time in case substitutes are needed.

## Bringing Props

The next step is to bring props. You should bring your own to class rather than assume that an elementary school is prepared for all contingencies. My props were few and very easy to assemble:

1. A black crepe-paper "robe" suitable for a kindergarten-size judge. A sheet of black crepe (or tissue) paper available at most variety stores works quite well once a hole is cut in the center to go over a child's head.
2. Enough chocolate bars for the entire class, some plain and some with nuts. Only one of each kind will be used initially and shown to the class; the rest should be hidden from view. Unknown to the class, however, one of the two bars in full view is actually an empty wrapper made to look like an actual candy bar. (Substitutions can be made here so long as there are two items similar in intrinsic value but variable in their preferred value.)
3. A Dictaphone. This was originally for my own later enjoyment, but recording the class exercise can also serve as a useful learning device for the entire class. Children love to hear their recorded voices, and the teacher can play back the classroom activity, perhaps on the following day, for a short discussion or a question/answer period about simple kinds of contracts the children would understand.

## Involving Students as Active Participants

Although much has been written about the value of role-playing as a teaching device, there is some reluctance in using it with lower elementary students. My experience will hopefully dispel this reluctance.

As soon as I arrived in class, I assigned one child to be the judge (in my case my son), followed by "hands up" voting on preferences for chocolate bars (with or without nuts). I then asked for two volunteers, one to represent each candy-bar preference, with my selection guided by what my son had told me in the planning stage.

A single bar of each of the two types of chocolate bars was placed on the "judge's" table in front of the class, and each of the two volunteers was asked to stand behind but not touch the bar he *least* preferred. I then told these two students that, even though each had received the kind of bar he did not particularly like, they were both free to talk to each other and work out an arrangement to exchange the assigned bar if they wanted to do so. The one condition I specified was that each must speak into the Dictaphone, one at a time. The two volunteers quickly discussed an exchange of chocolate bars to satisfy each other's preference. When both were satisfied that a "deal" had been reached, I suggested each pick up the candy bar he had obtained in the "negotiated" exchange.

If the negotiating session was consummated quickly, the concluding portion of the exercise involved a more complicated legal issue. In a business deal, one party does not always get what he thinks he bargained for. Thus, in the classroom, one of the children was very surprised and chagrined to discover that he had received an empty wrapper and not the chocolate bar he assumed was there. When I asked the "cheated" child to express his feelings into the tape recorder, he expressed every legal concept of "mistake of fact." Interestingly, at no time did he resort to an allegation of fraud, since it was clear that the child who had received a real candy bar knew nothing of my deception.

The child with the candy bar, of course, had quite different opinions about what constituted a fair resolution, saying that "fair is fair" and "a deal is a deal." Having exhausted all of his logical arguments, the child with the empty wrapper then suggested that perhaps they should split the candy bar. The owner of the bar promptly rejected this suggestion, commenting that he couldn't understand why his classmate would want to split the bar since the other boy didn't even like that kind of bar in the first place.

During all of this discussion, it should be noted that neither child became belligerent or teary. My role as attorney-leader involved some directing, but directing should be minimized as much as possible to allow the children to handle their own bargaining and dispute settlement. Once assignment of roles had been made and the few instructions given, I found my main job was to act as occasional prodder when talk bogged down.

Ultimately, the judge was called upon to decide the dispute in a brief, "mini mock trial." He concluded, in five-year-old language, that while there was merit on both sides, he felt his two classmates should split the sole candy bar. No doubt, a judgment based on fairness, although one cannot ignore the fact that he was concerned about his ability to coexist with classmates. (Is that very different from our common law tradition?)

Once the verdict was handed down and accepted, without any adult coaching, I then distributed my surprise supply of hidden candy bars to the entire class, including the child with the empty wrapper.

## Concluding

The happy class listened to a brief word about what I do for a living and the role of deals and disputes in this work. I explained very simply that people constantly get into arguments, because one person thinks that a situation, not necessarily another person, has been unfair, like the child who had expected a candy bar but got only paper. When someone feels hurt at losing to another what he thinks should rightfully be his, he and the other each hire an attorney to solve the problem. Because lawyers are experienced and know the rules, they can make a deal for the person each represents (the client) and then help decide a fair result if the deal later turns out differently than expected. Because lawyers are not so involved – they do not get the candy bars from the agreement – they can more easily reach a bargain or deal and resolve a later dispute. Finally, if even the lawyers can't agree or persuade their clients to agree, the lawyers and clients can go to court and allow a judge to make a decision.

A major value of this little exercise was its revelation about the capacity of lower elementary students to apply certain concepts of fairness and common sense which, after all, underlie law in general. The arguments made by the two student participants sounded amazingly familiar to anyone who has witnessed lawyers arguing the merits of a disputed transaction on behalf of clients. Although the language and presentation of lawyers are more sophisticated, the youngsters' reasoning process was very similar to theirs. The judge's verdict, too, was very like the verdicts in numerous court cases following meetings of counsel in the judge's chambers.

The children began to learn about the system of formal rules and informal practices which institutionalize the same rules of fair play that most of them have already begun to internalize. A definition of what is just may vary among this age group, as it does among a group of adults, but it exists nonetheless. The brief exercise in contracts reinforced the children's understanding that even though events may seem unfair to one party, there *is* something that can be done to rectify them in a reasonable way.

The ability to exercise control within the rules was another valuable lesson. Although I had set up the rules of "our" game ahead of time, the student-volunteers, representing the entire class, were allowed to negotiate their own deal without outside interference. Only when the bargain struck by them was found lacking an expected element – a candy bar for each – was it necessary to rely on formal "rules" for achieving a fair, if not totally satisfactory, resolution. In their ensuing arguments, this class learned firsthand some of the rudimentary skills of conflict management.

The final lesson is that deals and business arrangements of many types may not always be completely satisfying to every party, but a sense of fairness and justice can be achieved within the limits imposed by factors outside the control of anyone. And that, after all, is the purpose of law.

---

*Lloyd E. Shefsky is a senior partner in the Chicago law firm of Shefsky, Saitlin & Froelich, Ltd. He specializes in tax, financial, and business law matters, and is the author of numerous published articles.*

Reprinted with permission from LRE Project Exchange, Spring 1986, a publication of the American Bar Association Special Committee on Youth Education for Citizenship.

# CANDY BAR CONTRACTS

## Background Information

This activity was conceived by an attorney who was invited to school to explain what he did for a living. Understanding that early elementary children have limited life experience and substantive knowledge, the attorney was convinced that certain rudimentary principles of contract law are understood by many, if not all, five-year-olds.

Contractual arrangements permeate our society, and disputes over these arrangements are everyday occurrences for attorneys and laymen. Children, too, enter contractual relationships whenever they go to a movie or borrow library books. Children negotiate simple contracts whenever they promise to relinquish one comic book for another or trade baseball cards.

Disputes may arise after contracts are consummated for a variety of reasons -- one party cannot or will not fulfill the agreement or is perceived as not living up to all or part of the terms of the contractual agreement. In the example of the children's exchanged promises, a comic book may have missing pages.

A complex legal issue that frequently arises is known formally as a "mistake of fact." According to Black's Law Dictionary, a "mistake of fact" is an unconscious ignoring or forgetting of a fact relating to a contract, or a belief that something material to the contract exists or has existed when, in fact, it does not nor ever has existed. It is not, however, a mistake caused by a party's neglecting a legal duty. A "mistake of fact" can be mutual or not, each with differing legal results.

Negotiating a contract and then resolving a dispute over a mistake of fact was the focus this attorney chose for explaining his work. This is a legal situation arising again and again in the real world of business and everyday life.

## Purpose

This activity is designed to introduce lower elementary students to some of the main concepts involved in contract law and the attorney's role in resolving disputes concerning legal contracts.

NOTE: This activity requires the following props, which are to be provided by the teacher:

- enough candy bars for the entire class, some plain and some with nuts.
- a black crepe-paper student-sized "robe". A sheet of black crepe or tissue paper works quite well once a hole is cut in the center to go over a child's head.

## Procedure

NOTE TO TEACHER: Remove the candy from one candy bar, hiding the candy and making the wrapper appear to be an actual candy bar. Before the attorney arrives, place both the empty wrapper and a real candy bar of the second type on a "judge's table" at the front of the class. The children are to think that two candy bars lie on the table: one with nuts and one without nuts. The remaining candy bars should be kept out of sight until the end of the activity.

1. Upon arriving in class, assign one child to be the judge and give him or her the "robe" to wear.
2. Take a "hands up" vote on chocolate bar preferences (with or without nuts).
3. Ask for two volunteers, one to represent each candy-bar preference.
4. Place a single bar of each of the two types of chocolate bars on the judge's table in front of the class, and ask each of the two volunteers to stand behind but not touch the bar he or she least prefers.
5. Explain that, even though each has received the kind of bar he or she does not particularly like, they are free to talk to each other and work out an arrangement to exchange the assigned bar.
6. When both are satisfied that a "deal" has been reached, suggest that each pick up the candy bar obtained in the "negotiated" exchange.
7. Ask the "cheated" child to express his feelings. (You can expect to hear every legal concept of

   "mistake of fact.")
8. Ask the child with the candy bar to express his or her feelings about the deal and what a fair resolution might be. (Don't be surprised to hear "a deal is a deal.")
9. Direct a discussion between the two volunteers aimed at settling their dispute, but minimize your direction as much as possible to allow the children to handle their own bargaining and dispute settlement.
10. Finally, call upon the judge to decide the dispute in a "mini mock trial."

**Follow-Up Discussion**

Briefly tell the children about the attorney's role in deals and disputes. Explain that people constantly get into arguments because one person thinks that a situation, not necessarily another person, has been unfair, like the child who had expected a candy bar but got only paper. When someone feels hurt at losing to another what he thinks should rightfully be his, he and the other each hires an attorney to solve the problem. Because lawyers are experienced and know the rules, they can make a deal for the person each represents (the client) and then help decide a fair result if the deal later turns out differently than expected. Because lawyers are not so involved they do not get the candy bars from the agreement they can more easily reach a bargain or deal and resolve a later dispute. Finally, if even the lawyers can't agree or persuade their clients to agree, the lawyers and clients can go to court and allow a judge to make a decision.

Keep in mind the following points as you discuss the exercise with the children:

- The children, even at their young age, were able to apply the concepts of fairness and common sense, which underlie the law in general, to the resolution of their dispute.

- Even though events may seem unfair to one party, there is something that can be done to rectify them in a reasonable way.

- Parties can exercise control within the rules, as the students did in negotiating their own deal. Only when the bargain struck by them was found lacking an expected element -- a candy bar for each was it necessary to rely on formal "rules" for achieving a fair resolution.

- Deals and business arrangements of many types may not always be completely satisfying to every party, but a sense of fairness and justice can be achieved within the limits imposed by factors outside the control of anyone. And that, after all, is the purpose of the law.

This presentation is to be ended with the distribution of candy bars to all children.

*Reprinted with permission from Update on Law-Related Education, Winter, 1988, a publication of the American Bar Association Special Committee on Youth Education for Citizenship.*

Reprinted from A Lawyer in Every School, A Program of the New Hampshire Bar Association, Elementary Grade Level Packet, with permission of the New Hampshire Bar Association.

# IS THERE AN ENFORCEABLE CONTRACT?

1. Cleopatra says to Anthony, "I think I'll sell my canoe at the end of the summer." Anthony says, "I'll take it." Cleopatra decides to keep her canoe. Anthony sues.

2. Ben Hur owns a beautiful Cadillac convertible. Unfortunately, it is a lemon. One day Ben Hur gets so fed up with his repair bills that he says, "I'll sell this old chariot to the first person who offers me $10." Icarus offers him $10. Ben Hur refuses to sell the Cadillac. Icarus sues.

3. The Fiddler on the Roof offers to buy Nero's violin. Stradivarious has the identical violin and accepts the fiddler's offer. The Fiddler refuses to buy Stradivarious' violin. Stradivarius sues.

4. Mozart offers his piano for sale at $450. Chopin orally agrees to buy the piano and promises to bring the money over in one week. When Chopin does not appear with the money as promised, Mozart calls and asks for the money. Chopin replies, "You don't have anything in writing. I don't want your piano." Mozart sues.

5. Mona Lisa takes film to a camera shop and asks to have the film developed. When the camera shop tells her the pictures are ready, she replies that she doesn't want the pictures because they are all pictures of DaVinci an she doesn't like him anymore. The camera shop sues.

6. Romulus and Remus negotiate a contract to build a new home for Romulus. Remus sends Romulus a letter stating all the terms he proposes for the contract. At the end of the letter, he says, "If I do not hear from you within 10 days, I assume you accept my terms." Romulus does not contact Remus and does not pay the required deposit. Remus sues.

7. On Ali Baba's 16th birthday, his Uncle Aladdin gives him a document which says, "I, Aladdin, hereby promise to give to my nephew, Ali Baba, my magic lamp when he reaches the age of 21." An antique collector visits Uncle Aladdin and buys the lamp for a considerable price. Ali Baba sues.

8. Alexander the Great tells Hannibal, "I will pay you $50,000 if you cross the Alps by elephant." Hannibal does so. Alexander the Great refuses to pay. Hannibal sues.

9. Cinderella has a diamond necklace worth $2000 given to her by her fairy godmother. Now she needs money and wants to sell the necklace. Finally she accepts an offer of $700 from her ugly stepsister because it is the highest offer. After accepting the offer, but before she hands the necklace over the her stepsister, Cinderella receives -- and accepts -- an offer of $1000 form Mr. Prince. The stepsister sues.

10. Jezebel always disliked her neice's husband, Arthur. One day she offers Guinevere $10,000 if she will divorce Arthur. One year later, Guinevere divorces Arthur. Jezebel refuses to pay. Guinevere sues.

11. Romeo and Juliet bet $100 on the outcome of the Cardinals-Cowboy football game. The Cardinals win -- and so does Juliet -- but Romeo refuses to pay. Juliet sues.

12. Bluebeard calls an insurance agent to come to his castle to discuss life insurance policies on his wives. After discussing all the options, Bluebeard signs the application. The next day he decided he really doesn't want the insurance and calls to cancel the policies. The insurance company sues.

## THE TRUTH ABOUT CONTRACTS

1. In most instances, an agreement does not have to be in written form in order to constitute a contract.

2. Not every agreement is a contract: there must be an offer and acceptance; there must be consideration.

3. Not every promise creates a contractual obligation; there must be consideration.

4. Agreements may be contracts even if the documents do not refer to "contracts". Contracts may appear as receipts, sales slips, applications, deposits.

5. A contract need not be drafted by a lawyer in order to be enforceable.

6. A promise which is only opinion creates no contractual obligation.

7. A promise which is "puff" creates no contractual obligation.

8. A contract may be created without any magic words or legalese.

9. Failure to read a contract before signing does not release a person from his/her contractual obligations.

10. A "bad bargain" does not release a person from his/her contractual obligations - except in the instance of fraud.

11. Unless the contract results from a door-to-door solicitation, a person has no right to cancel a contract after signing it.

12. A co-signer is equally liable with a purchaser on a contract; the lender or seller can seek payment from the co-signer without going first to the purchaser.

13. "Bad luck" does not release a person from his/her contractual obligations; illness, loss of job, emergency expenses does not affect obligations.

14. A contract will not be created unless the essential terms are defined: 1. parties; 2. subject matter and quantity; 3. time for performance; 4. price or consideration.

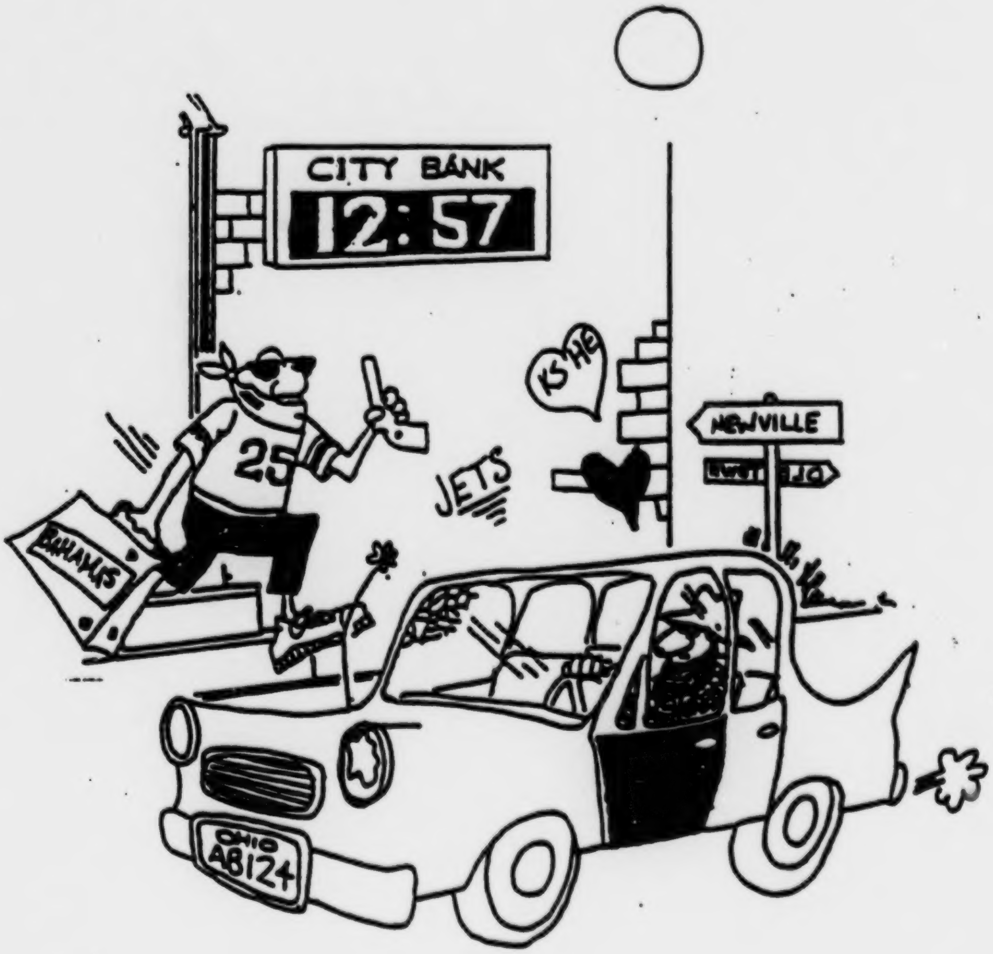
Reprinted with permission from A Resource Guide for Lawyers and Law Students for Effective Classroom Use, a publication of the Resource Center for Law-Related Education, St. Louis.

BAR ASSOCIATION OF METROPOLITAN ST. LOUIS
ONE MERCANTILE CENTER, SUITE #3600
ST. LOUIS, MO 63101-1696

Reprinted with permission from A Resource Guide for Lawyers and Law Students for Effective Classroom Use, a publication of the Resource Center for Law-Related Education, St. Louis.

## "JUST THE FACTS, PLEASE!"

Imagine that you are an eyewitness to the following event. Study this scene. You will be given a short time to observe the facts. When you are told to stop, turn the scene over, and turn to the person next to you and describe what you saw - tell him or her "all the facts." That person should tell the next person, and so on, until the last person gives a report to the whole group. Good luck!



# Dispute Resolution

## The Case of the Professional Tap Dancer/Early Elementary

**Arlene Gallagher**

Here is a lesson law professor Ted Occhialino does with second graders. He usually joins the class after the teacher has presented the situation to the kids.

In this case two friends, Harry and Bill live in an apartment building. Harry lives on the second floor, directly over Bill. Their friendship is in trouble when Harry becomes a professional tap dancer but can only practice late at night, which keeps Bill awake.

### Rights in Conflict

Harry and Bill lived in an apartment building. Harry's apartment was directly above Bill's. They were pretty good friends. Sometimes they went bowling together. Their friendship ended when Harry decided to become a profssional tap dancer.

"I don't have anything against tap dancers, Harry," Bill said. "But do you have to practice *every evening*. The noise is driving me crazy."

"Sorry," said Harry. "But I have to practice if I'm going to be a pro. Besides, it's a free country, and I can do whatever I want in my own home. My home is my castle, as they say."

"Sure," said Bill. "But what about my rights? You're disturbing the peace. *My peace*."

Harry and Bill have a problem. Their rights are in conflict. Conflicts are a natural part of human relationships. Everyone gets into fights or arguments once in a while. Sometimes people can resolve their conflicts but sometimes they cannot. A third person can often help to resolve the conflict between two people. That person has to be someone who can see both sides of the argument and come up with a solution that's fair to both people. In a court that "third person" is a judge.

### Sorting It Out

Ted's strategy as a resource person is to help youngsters think clearly about the situation. He ask them to:

- Identify the problem;
- State some possible solutions;
- Consider the consequences of each solution;
- Make a decision that is legal and fair to all.

In this case, what are the two rights that are in conflict?

1. Harry's right to practice his profession in his own home. Many people do this.
2. Bill's right to have peace and quiet in his own home. People have a right to a reasonable amount of quiet in their home.

There are many ways to resolve this conflict and some solutions are better than others because they are fairer to the people involved.

Ted uses a role play to state these points. He tells half of them to pretend to be Bill and the other half to be Harry. He leads a general discussion, calling on Bills and Harrys. (For older children you can have them pair up and try to resolve the problem in a way that satisfies both parties.)

Sometimes the class comes up with some interesting solutions, such as carpeting Bill's ceiling or having them switch apartments. It is important to encourage children to try to resolve conflicts initially without third party intervention. The court should not be seen as a first resort for conflict resolution.

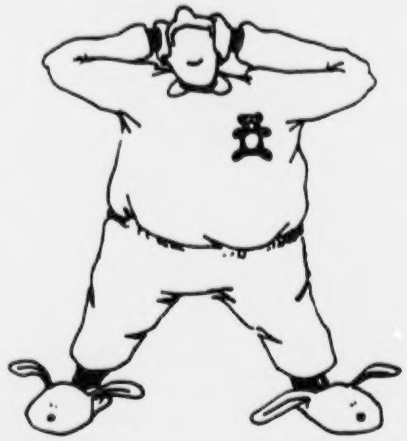
Or you can present possible solutions and ask the children to decide if they are fair.

This problem can also be used to discuss the basic point that "there should be rules made in advance and fair procedures to enforce them." There was no rule in this apartment against tap dancing. Would it be fair for the landlord to make one after Harry started tapping? What if there was a rule against pets and Bill got a huge dog that barked every time Harry tapped? What about Bill's right to a certain amount of peace and quiet? How can this be balanced with Harry's right to practice his profession?

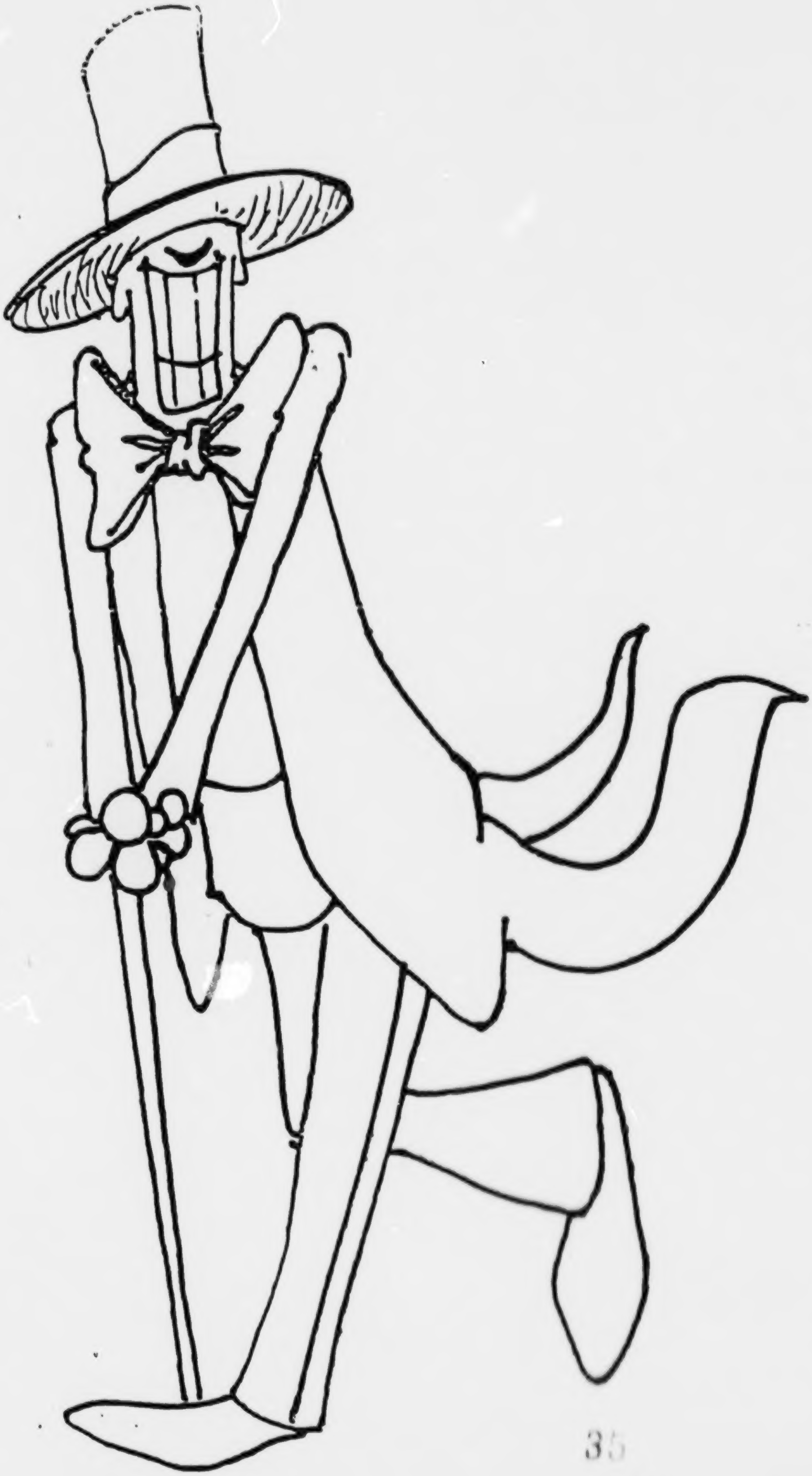
Encourage children to discuss why it is important to know the rules ahead of time. Ask them about games they play and the rules for them. What happens if someone breaks or changes a rule?

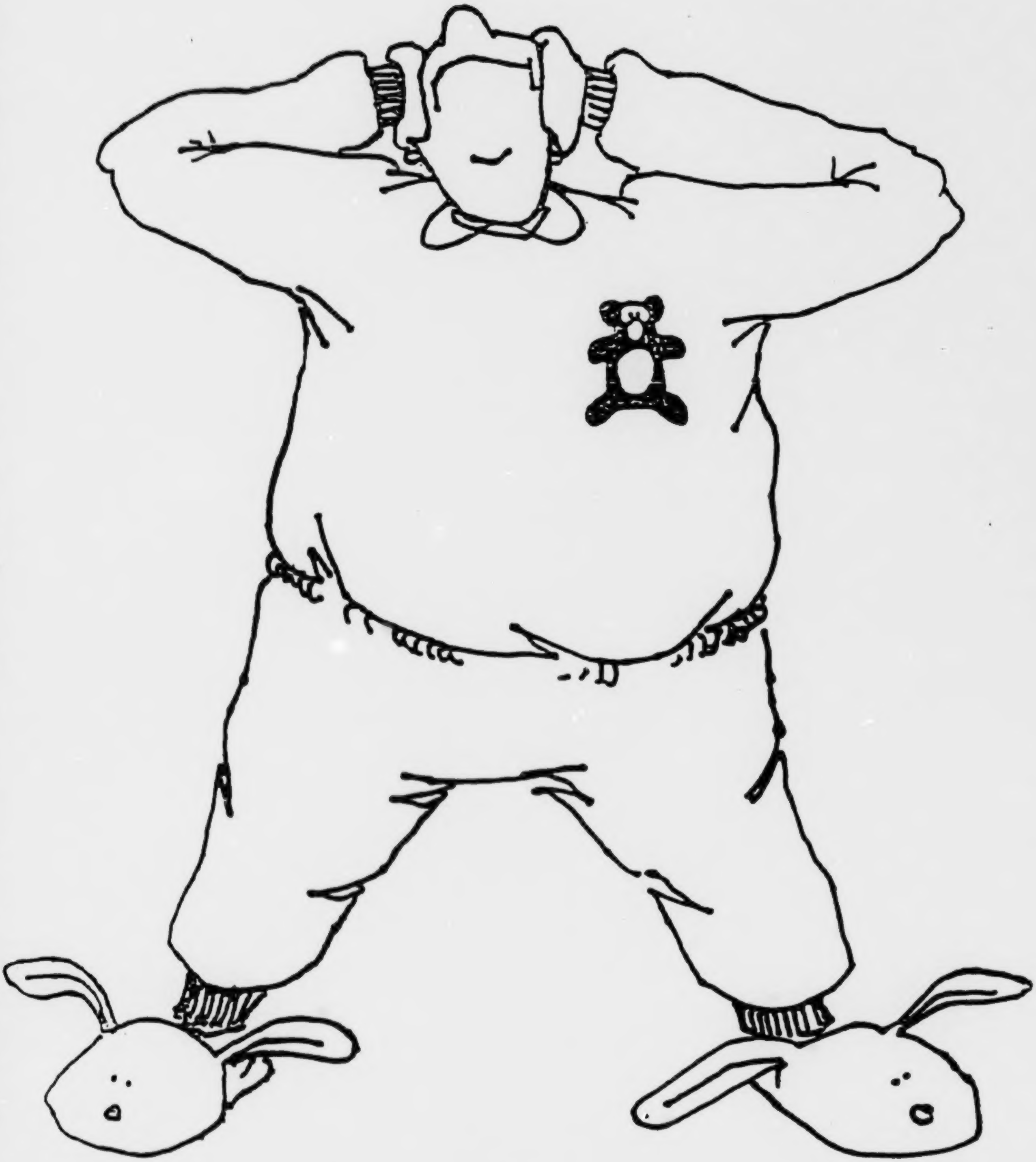
---

*"Rights in Conflict: The Case of the Professional Tap Dancer," from* Living Together Under the Law: An Elementary Education Law Guide. *Author: Arlene F. Gallagher, 1982. Publisher: Law, Youth, and Citizenship Program of the New York State Bar Association and the New York State Department of Education, Albany, New York, 12234.*



Reprinted with permission from LRE Project Exchange, Spring 1986, a publication of the American Bar Association Special Committee on Youth Education for Citizenship.





# Alternatives

## Mediation and the Adversary Process/Grades 5-8; 9-12

**Melinda Smith**

Because law-related education focuses on the judicial system, and because mock trials are an appealing strategy, we often overlook nonadversarial methods of conflict resolution.

The following strategy is intended to contrast mediation with the more familiar adversarial process. It can be used with students in grades five through high school. The cases used can be changed according to the age and sophistication of students.

### The Two Cases

**CASE 1 (GRADES 5-8)**

Plaintiff: Tony

Defendant: Jody

Jody was sick and couldn't go on her paper route, so she asked Tony to do it for her. She agreed to pay him $2. Tony delivered the papers, but didn't put plastic bags on them. It rained and the papers were ruined. Jody refused to pay Tony the $2.

**CASE 2 (SECONDARY)**

Plaintiff: Cecil Jackson

Defendant: Sarah Miller

Sarah Miller moved into a house next door to Cecil Johnson, a retired man who spends his time landscaping his yard. Mr. Jackson had grown an eight-foot hedge between the two houses. According to Sarah, the hedge blocked her view of the street when she backed out of the driveway, so she asked Mr. Jackson to trim it. After several weeks with no response from Mr. Jackson, Sarah cut down the hedge because she believed it to be a danger to her. Mr. Jackson is furious and wants Sarah to replace the hedge at a cost of $435.

### Adversarial Action

Explain to students that they will experience two different methods of resolving disputes: the adversary process of the court, and the mediation process, which takes place in neighborhood justice centers in cities throughout the country.

Divide the class into groups. Explain that the groups will first role play a case using the adversary model. One person in each group should play the plaintiff, a second the defendant, and a third the judge.

Explain the court procedure as follows:

1. Judge asks plaintiff to give his side of the story.
2. Defendant then gives his side of the story.
3. Judge can ask questions, during and/or after hearing from the parties.
4. Judge makes a decision and delivers it.

Conduct simultaneous role plays. They should take about 10 minutes. Then with the entire group ask the following questions:

1. Was the role of judge difficult? What did they like or dislike about being judges?
2. Did the plaintiff and defendant think they were treated fairly. How did they feel about the judge's decision?

### Mediation in Action

Explain that students will next mediate the same case. Allow at least 15 minutes for this role play. The judge will become the mediator, and plaintiff and defendant will now be called the disputants. Have the plaintiff and defendant switch roles from the first role play. Explain that the mediator does not make a decision in the case. His/her role is to help the disputants reach an agreement. The procedure is as follows:

1. Mediator explains that in mediation the two parties will make their own agreement. They must not interrupt each other. If the need arises, the mediator will talk to each party separately.
2. The mediator asks each disputant to define the problem as he or she sees it and express feelings about it.
3. Each disputant defines the problem and expresses feelings about it.
4. The mediator restates views of both disputants. The mediator asks questions to clarify issues.
5. The mediator asks disputant #1 if he or she has a proposed solution for the problem. The mediator then asks disputant #2 if he or she agrees. If not, the mediator asks disputant #2 for a proposed solution and asks disputant #1 if he/she agrees.
6. If there is an agreement, the mediator restates the agreement to make sure both disputants approve.
7. If no agreement is reached, the mediator talks to each disputant separately, asking each how he or she is willing to solve the problem. Then the mediator brings them together and asks them to offer their solutions. The mediator will repeat step six if an agreement is reached

### Making Comparisons

After the allotted time, bring the class back together and debrief with the following questions.

1. How did being a mediator compare with being a judge? Was it easier or more difficult?
2. Did disputants think they were treated fairly? How did they feel about the process?
3. Was a solution reached? How did it compare to the judge's decision?
4. What are the advantages and disadvantages of each method of dispute resolution? What kinds of conflicts are best suited for each method?

---

*Melinda Smith is a trained mediator and directs a school mediation program in which students are trained to mediate school-related disputes. She also directs the New Mexico Law-Related Education Project.*

Reprinted with permission form LRE Project Exchange, Spring 1986, a publication of the American Bar Association Special Committee on Youth Education for Citizenship.

Massachusetts Bar Association

## A VISITOR FROM OUTER SPACE

You are quietly watching television with your family when a special news bulletin comes over the TV station. You immediately see that this is not the normal type of news bulletin because there is what looks like a very strange creature on the screen - the only thing which is familiar is that he is speaking in English. He tells you that he and his people have gained control over all of the communications networks in the United States and that everyone had better pay attention to what he has to say. You change the channel, and just as he said, there he is on every station. He begins to speak very loudly and you gather your family around because you are beginning to worry about what he is going to do. His speech is as follows:

> "My name is STHGIR and I am from the planet NOITUTITSNOC in another galaxy where the inhabitants are far superior to the beings on this planet EARTH. Just as we have gained control over the communications of the United States, we have the ability to take complete control over every one of your lives. We do not want a war between our planet and yours, but we do want to control some things so that we can live in peace and harmony with you. We have looked at some of your laws and the way your government operates and have found it gives too much freedom to the individual. Therefore, we are going to conduct a survey to try and arrive at a decision with which both you and I are happy. As I have said, I do not want to take everything away from you - but I can't allow you to continue to live as your have in the past. Therefore, I am giving you a list of ten of the rights which you now have according to your Constitution. You are to look over the list and decide which of the ten are most important to you. I will allow you to keep FIVE of the ten rights - the five which get the most votes from all the citizens of the United States. You are to rank the following rights in the order in which you would give them up, 1 being the one you would give up last, and 10 being the one you would give up first. After you have completed your ranking, you will receive further instructions."

______ **Right to bear arms**
______ **Right to freedom of speech**
______ **Right to legal counsel**
______ **Right to protection from cruel and unusual punishment**
______ **Right to freedom of the press**
______ **Right to a jury trial**
______ **Right to freedom of religion**
______ **Right to peacefully assemble**
______ **Right to privacy**
______ **Right to protection from self-incrimination**

**Rick Miller, Citizenship Law-Related Education Program for the Schools of Maryland**

Reprinted with permission from Curriculum Materials, a publication of the Massachusetts Bar Association Lawyer in the Classroom Program, prepared by the MBA Law Related Education Committee.

Celebrate the significance of 1787 in an upbeat 1980s' way…

# Do the Bill of Rights Rap!

BILL OF RIGHTS
32

If your school is planning a program in honor of the bicentennial of the Constitution, here's a way to make your class the hit of the show.

To do this rap, you don't need music, just a steady rhythmic beat—such as handclapping. By assigning stanzas to individual students, you can also perform the rap for one other in the classroom. Encourage kids to put personality into their performance!

★

The Constitution was made for
you
And friends it was made for me.
It laid down the law for the
government
And said all people are free.

It made three parts to the
government
To run this country of ours.
And it said, "No part can get
too strong!"
That's called the "balance of
powers."

**Barbara and Jim Bongard**

BEST COPY AVAILABLE

We have a president and senators
And representatives, too,
A Supreme Court with lots of judges
And voters—yes folks, that's you.

When the Constitution was written down,
Some started to scream and shout.
They said, "There are too many freedoms that
This document has left out!"

James Madison helped to fix it up
With some special guarantees.
We call these freedoms the Bill of Rights.
They're our civil liberties.

This thing we call the Bill of Rights
Is the Amendments from one to ten.
Now listen closely while we rap them out,
'Cause we aren't goin' through them again!

Number One says we've got freedom
Of religion and speech and press.
And we've got the right to assemble,
And to petition for redress.

Number Two says that this country
Needs to keep itself from harms,
So we need a state militia
And the people need to keep their arms.

Number Three says army soldiers
Don't have to live with us.
If we don't want them in our house
Then the government can't fuss.

Number Four was written mainly
To keep police in line.
They need to have a warrant
To search your house or mine.

Number Five says no court can put you
On trial more than just one time.
You don't have to testify against yourself
If they accuse you of a crime.

Number Six says if you're on trial you
Must be told what the charges are.
You must have a lawyer, and witnesses
Must testify before the bar.

Number Seven is a special guarantee
So you need have no fears.
It gives each citizen the right to trial
By a jury of your peers.

Number Eight says it's wrong for punishment
To be unusual or cruel.
And your fine or bail can't be so high
That it goes against the rule.

Number Nine was put in there
To let the government know
That we all have a lot more freedoms
Than this Bill *of* Rights can show.

Number Ten says the *people* have the power
In the American institution.
And the government can only do
What it says in the Constitution.

Now there's a lot more we could rap about
That we don't have time to say.
So we're callin' on *you* to think about
What it means to *you* today.

Though it's been around 200 years
What it said back then is true.
The Constitution was made for me
And friends—it was made for you!

---

**Barbara Bongard is kindergarten director, Auburndale School, Cordova, Tennessee. She collaborated with her husband.**

Copyright 1987 by Barbara and Jim Bongard, reprinted from Instructor. September 1987
with permission from Scholastic, Inc., 730 Broadway, NY, NY 10003

Reprinted with permission from Constititutional Update: Liberty, a publication of the American Bar Association Special Committee on Youth Education for Citizenship.

Liberty

# Introducing the First Amendment/Upper Elementary/Middle

**Donna Sorenson**

The New York
ПРАВДА

Susan Wise

This activity will take two class periods, though it can be compressed to one if it's used by an outside resource expert. (It would be a natural for a lawyer or judge interested in the First Amendment, as well as for a representative of the media.) It has two objectives:

1. Students will inductively discover the First Amendment in action through newspaper reading.
2. Students will get an overview of the Bill of Rights.

## Procedure

Using a classroom set of newspapers....

1. Hand out the national and local sections of the daily paper.
2. Ask students to use a colored pen or marker and cross out any articles in these two sections of the paper that contain criticism of government, government leaders or government policies and/or any that contain proposed changes of official people or positions.
3. Discuss articles and any questions or "borderline" articles that students marked.
4. Discuss with students:
   - How interesting and/or informative would the newspaper be if all of the marked articles were missing?
   - Have you ever known of anyone personally damaged – emotionally, professionally or financially – by something printed in the newspaper? Did this change your opinion of "freedom of the press?"
   - Is freedom of the press absolute? You may wish to discuss questions of libel, free press/fair trial, publication of national secrets.
   - Is the press – and the television/radio news – less "free" in some communities in the United States than others?
5. If time permits, the video tape, "A Question of Balance: Fair Trial/Free Press," produced by the American Bar Association's Communication Department and the Association of American Newspaper Publishers, discusses an issue that seemingly conflicts with a completely free press. A copy of this video tape can be ordered from Visual Associates, Inc., 665 Fifth Avenue, New York, New York 10022.
6. Use a cartoon or another news article to illustrate that there are other significant constitutional amendments beyond the familiar First Amendment.
7. Distribute to students a copy of the Bill of Rights.
8. Review with them and/or have them find in the dictionary any unfamiliar words, i.e., "abridging," "redress," "grievances."
9. Allow students to choose one of the first ten amendments and find articles in the newspaper that relate to "their" amendment. Allow them to go to other issues of the newspaper or news magazines to find relevant articles, if necessary.
10. Finally, the teacher may assign students to make a bulletin board displaying the news articles found labeled with the appropriate amendment.

---

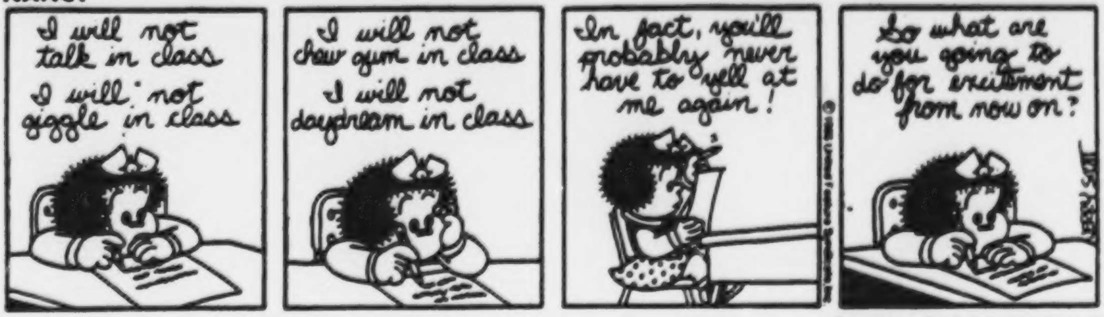
*Donna Sorenson is a Salt Lake District teacher. This activity was revised by Carol Lear and is part of the curriculum published by the Utah Law-Related and Citizenship Education Project.*

Reprinted with permission from Constitutional Update: Liberty, a publication of the American Bar Association Special Committee on Youth Education for Citizenship.

# Liberty

**The Bill of Rights/Grades 4-6** **Connie Yeaton and Karen Braechel**

**NANCY**


I will not talk in class
I will not giggle in class
I will not chew gum in class
I will not daydream in class
In fact, you'll probably never have to yell at me again!
So what are you going to do for excitement from now on?

Reprinted with special permission of United Feature Syndicate

## Objectives

Students will be able to identify the Bill of Rights as that portion of the Constitution which protects individual freedoms by illustrating at least three of the freedoms.

## Background

The Constitution establishes a system of government with delineated duties and obligations. When signatures were added to the final document, the framers of the Constitution knew the instrument was not yet perfect. One area causing difficulty was the lack of a statement of individual rights. Several state constitutions already had these rights listed.

In order for the convention to move smoothly to closure, an agreement was reached to consider a bill of rights after the Constitution was ratified. Accordingly, the first ten amendments were added on December 15, 1791. In a mere 462 words, they defined the rights of people in the United States.

This lesson is designed to introduce the Bill of Rights to young people. They will learn that their rights are protected by our laws, but they also must act responsibly. Several situations involving personal rights will be studied.

## Procedure

1. Distribute copies of "Freedom of Speech, Jr."
2. Explain that on the sheet there are six situations. They will have several questions to answer about each example and should think carefully before making any decisions. They can write the answers on the handout.
3. After students have completed the activity independently, have them assemble in groups of four to discuss their opinions. Instruct them to arrive at a group consensus for each item. Then have groups report to the whole class.
4. Conclude the discussion with these questions: Can you come up with a general rule stating when people should be allowed freedom of speech? When should it not be allowed? Should adults have more freedom of speech than children? What if these people in the examples had been adults? Would it make any difference? Why or why not? What would happen if people were not allowed any freedom of speech?
5. Read the newspaper article "Students Can Be Suspended for Vulgar, Offensive Language," the case that recently came before the Supreme Court concerning freedom of speech. Students might find this interesting since it concerns a speech given by a high school boy in support of his friend's candidacy for vice-presidency of the student body. As you read the newspaper article, have the students listen for the Supreme Court's answers to the questions discussed on the activity sheet.
6. Consider the questions: Does this behavior interfere with another individual's rights? Is the action acceptable? If no, should this behavior be regulated by a rule? If a rule is needed, should it be made by individuals or by the government?

   (Answers: Yes, society expects appropriate speech and behavior in public places. No, vulgar and offensive terms should not be used. Yes, a rule should be made for the general welfare of the students and society. The rule should be made by the local school board.)
7. Go through another situation by reading the following: The children of Bershire Elementary School were studying the pioneers. They were asked to write an essay for the school newspaper that included a conversation between two pioneer children. The paper was to be as true to life as possible, but no other directions were given.

   When Jonathan handed in his paper, the teacher was appalled. Jonathan's essay described a heated argument over a game two pioneer children were playing. The conversation included some swear words—language considered inappropriate for a school situation. The teacher not only verbally scolded him, but also insisted that he redo the assignment for publication. Jonathan had worked hard on the essay. He felt that the conversation was realistic and the language used was appropriate for that particular situation. Thus, he refused to do as the teacher asked.
8. Discuss these questions with the class: Was Jonathan justified in including swear words in his essay? Should

he be allowed to do this? Was his teacher correct in asking Jonathan to rewrite his essay? If the teacher permits Jonathan to include swear words in this essay, should he and other children be permitted to do the same in other essays? Should the swear words be printed in the school paper? Who should decide this issue: Jonathan? The teacher? The principal? Jonathan's parents? A judge? Explain.

9. Explain that in the discussions about freedom of speech and freedom of the press, you have been talking about the right of people to do or not to do something.

   The writers of the Constitution were concerned with the rights of individual people living in the United States. Several states already had a list of those rights in their state constitutions. Some suggested that such a list be part of the United States Constitution, but others did not feel it was necessary.

   A compromise was once again reached. Remember that a compromise is putting together an idea by using parts of two different ideas. Each side gives up part of its idea to reach an agreement. Those wanting a bill of rights agreed to sign the Constitution if it would be added later. Those who felt it was unnecessary agreed to the addition of a bill of rights, if that would make the others sign the Constitution. The first ten amendments, or additions, to the Constitution list rights of citizens of the United States. We call these ten amendments "The Bill of Rights."

10. Explain that so far the discussion has been on two different rights listed in the Bill of Rights—freedom of speech and freedom of the press. Congress may not make laws limiting these freedoms. However, this does not give individuals the right to say or print false things. Nor does it allow people to endanger others by speech or writing.

    One example of abusing freedom of speech is yelling "FIRE!" in a crowded theater. Such irresponsibility could cause people to panic and result in death.

11. List some of the other rights found in the Bill of Rights.
    - One is freedom of religion, which means we can each worship as we want, at the church we choose. It also means that we have the right not to worship.
    - People are protected from unreasonable searches and seizures. Police are not allowed to enter and search a person's home without a warrant signed by the court. This order states what is expected to be found. This same rule applies to the person's possessions.
    - We are guaranteed the right to a fair trial if we have to go to court. Cruel and unusual punishment may not be used. For instance, hanging a person by the thumbs would not be a correct punishment for speeding.

    With each of the rights listed, there are responsibilities. It is up to each person living in the United States to consider other people. We must not interfere with their rights, if we want to maintain our own freedom.

12. Pass out constuction paper. Instruct students to label this, "Our Freedom: Our Bill of Rights." Fold paper in thirds. Illustrate three individual rights guaranteed by our Constitution. Use a summary of the Constitution for reference.

## Handout: Students Can Be Suspended for Vulgar, Offensive Language

WASHINGTON—The Supreme Court today significantly broadened the disciplinary powers of public school administrators, ruling that students may be suspended for using "vulgar and offensive" language.

By a 7-2 vote, the Court upheld the three-day suspension in 1983 of a Spanaway, Washington, high school senior for giving an assembly speech filled with crude sexual allusions.

"Surely it is a highly appropriate function of public school education to prohibit the use of vulgar and offensive terms in public discourse," Chief Justice Warren E. Burger wrote for the court.

Matthew Fraser's one-minute speech in support of a friend's candidacy for student body vice president of Bethel High School contained no dirty words, but it caused a brief uproar among his fellow students.

His friend won the election by a wide margin.

Officials at the school in suburban Tacoma suspended Fraser for violating the school's disruptive conduct rule in "materially and substantially" interfering in the educational process.

Now a student at the University of California at Berkeley, Fraser sued school district officials with help from the American Civil Liberties Union.

A federal judge ruled that Bethel High officials had violated Fraser's free-speech rights by disciplining him, and the 9th U.S. Circuit Court of Appeals upheld that ruling by a 2-1 vote.

School officials were ordered to pay Fraser $278 in damages and $12,750 in legal costs. Today, the Supreme Court said the lower courts were wrong.

The Reagan administration had urged the court to rule against Fraser. Justice Department lawyers argued that student speech may be restrained "if officials have a reasonable basis for the regulation grounded in the maintenance of an atmosphere of civility or the transmission of basic societal values."

They said such regulations should not be used to suppress "student expression of a particular political viewpoint."

Burger wrote: "The determination of what manner of speech in the classroom or in (a) school assembly is inappropriate properly rests with the school board."

He was joined by Justices Byron R. White, Lewis F. Powell, William H. Rehnquist and Sandra Day O'Connor.

Justices William J. Brennan and Harry A. Blackmun voted against Fraser but did join Burger's opinion.

Justices Thurgood Marshall and John Paul Stevens dissented.

### Freedom of Speech, Jr. Handout

Directions: Read the situations below. Answer each question.

Example: Tommy swears at the principal.
Does this behavior interfere with another individual's rights?
*Yes, the principal's rights are violated.*
Is the action acceptable?
*No, this language is unacceptable.*
If no, should this behavior be regulated by a rule?
*Yes, a rule could be written.*
If a rule is needed, should it be made by individuals or by the government?
*Individuals should write the rule.*

1. Jimmy, a real joker, stands up during math time in Mrs. Snorgweather's class and yells, "I smell smoke!" (He really didn't.)

   Does this behavior interfere with another individual's rights?

   Is the action acceptable?

   If no, should this behavior be regulated by a rule?

   If a rule is needed, should it be made by individuals or by the government?

2. Mary thinks there is not enough peanut butter in the sandwiches at the lunchroom, so she makes a protest sign and puts it up in the cafeteria. It reads: "We want more peanut butter!"

   Does this behavior interfere with another individual's rights?

   Is the action acceptable?

   If no, should this behavior be regulated by a rule?

   If a rule is needed, should it be made by individuals or by the government?

3. Susie walks up to her grandmother, takes a sniff, and announces, "Grandma, you smell funny."

   Does this behavior interfere with another individual's rights?

   Is the action acceptable?

   If no, should this behavior be regulated by a rule?

   If a rule is needed, should it be made by individuals or by the government?

4. Alan and his friends are playing jump rope and singing loudly outside of the library window.

   Does this behavior interfere with another individual's rights?

   Is the action acceptable?

   If no, should this behavior be regulated by a rule?

   If a rule is needed, should it be made by individuals or by the government?

5. Mr. Swartz' class wants to play softball instead of kickball at recess time. They ask Mr. Swartz if they can have a class meeting to decide.

   Does this behavior interfere with another individual's rights?

   Is the action acceptable?

   If no, should this behavior be regulated by a rule?

   If a rule is needed, should it be made by individuals or by the government?

6. Annie's teacher tells her to be quiet. Annie takes a big piece of tape and puts it over her mouth in mock protest.

   Does this behavior interfere with another individual's rights?

   Is the action acceptable?

   If no, should this behavior be regulated by a rule?

   If a rule is needed, should it be made by individuals or by the government?

### Extension Activities

1. Ask each student to prepare a "Bill of Rights for Students." Post these on the bulletin board.
2. Review a newspaper article dealing with a right.
3. Present the following situation for discussion: "There are too many vulgar words in today's books. Possible solution—burn all books with offensive language."

---

*This article is taken from* A Salute to Our Constitution and the Bill of Rights: 200 Years of American Freedom, *which was created by Connie Yeaton, law-related education coordinator for the Indiana State Bar Association, and Karen Braeckel, newspaper in education consultant for* The Indianapolis Star *and* The Indianapolis News.

Reprinted with permission from Constitutional Update: Liberty, a publication of the American Bar Association Special Committee on Youth Education for Citizenship.

# Liberty

**Freedom of Speech/Grades 4-6**

**Dale Greenawald**

This activity will help students identify why freedom of speech is important in a democracy and how their life would be different without it. They will also recognize that there are limits on freedom of speech and that this freedom demands responsibility in its use. This exercise, which will take approximately 45 minutes, will also develop analytical skills.

## Procedures

Have each student make a list of how his or her life might be different if there was no freedom of speech. For example, their favorite TV show might be cancelled because someone in the government didn't like it. Share the answers with the class and briefly discuss each.

Discuss why it is important to have as many ideas about an issue as possible. The major point to be made here is that the more ideas that are discussed the higher the likelihood of a good one being selected.

Indicate to students that a long time ago men wrote a set of rules or guidelines describing how our country ought to be governed. These rules are called the Constitution and its amendments. The First Amendment guarantees that all of us have freedom of speech. Think about the following situations and decide if you think that there should be a right to say or print these kinds of things.

- lies; things that aren't true
- things that may cause damage, such as printing or saying something false about a person that causes him or her to lose the respect of the community and suffer financial consequences
- fighting or threatening words, such as threatening to hurt people if they don't do what you want them to do
- saying something that may be dangerous, such as creating a panic by spreading a false rumor
- saying things that people find offensive, such as nasty words.

## Looking at Some Cases

From thinking about these examples, do students think that people have a right to say whatever they want all of the time? Why or why not? In what kinds of situations may there be limits on what people can say?

Depending upon the maturity of students they may work in groups or individually to use the criteria developed above to consider what might happen if freedom of speech allowed people to do the following: (They should think about what might happen in each instance and whose rights would be in conflict.)

- shout fire in a crowded place when there was no fire
- take out an ad in a local paper and say that a business has terrible products when, in fact, the products are very good
- criticize the police or the president in a TV speech
- send letters to other people with insulting language
- send a letter to an editor of a newspaper supporting an unpopular group such as the communists

Discuss each of the cases with the entire class. Use the discussion of these issues – and especially the discussion of criticism of the president and the letter to the editor – to help students recognize what kinds of activities are protected and which ones aren't.

## A Supreme Court Case

Read or have students read the brief description of the Tinker case and consider if the Tinkers should have been allowed to wear their arm bands. Ask students to list reasons why the Tinkers should be allowed to wear arm bands; ask them to list reasons why they shouldn't be allowed to wear arm bands. The resource person should critique student responses and at the conclusion explain the Court's reasoning in allowing the Tinkers freedom of expression.

## The Tinker Case

John and Mary Beth Tinker felt that the war in Vietnam was wrong. Many people around the country were wearing black arm bands to express their belief that the war was wrong. John and Mary Beth decided to wear black arm bands to school. The principal told them that they couldn't do that, although students were allowed to wear political buttons.

The Tinkers wore the arm bands to school anyway. Some students outside of the school got angry with John and Mary Beth for wearing the arm bands. The principal sent John and Mary Beth home and told them not to come back until they had taken off the arm bands.

Should the Tinkers be allowed to wear the arm bands? Whose rights are in conflict here? Do you think that the First Amendment should be applied to allow the Tinkers to wear the arm bands? Why or why not?

### THE COURT DECIDES

The Supreme Court held 7-2 that the First Amendment permitted the wearing of arm bands to school as a protest.

Justice Fortas held for the majority that neither students nor teachers "shed their constitutional rights of freedom of speech at the schoolhouse gate. . . Students. . . are 'persons' under our Constitution. They are possessed of fundamental rights which the state must respect."

As long as the protest would not "materially and substantially interfere with school discipline," it is permitted.

Justices Harlan and Black dissented, arguing that the widest possible latitude must be accorded school officials to maintain appropriate discipline. As long as the principal's order was not intended to prohibit an unpopular point of view while permitting majority opinion, it should be permitted.

Reprinted with permission from Constitutional Update: Liberty, a publication of the American Bar Association Special Committee on Youth Education for Citizenship.

# Liberty

**Freedom of Speech and Expression/Grades 7-12**

**Dale Greenawald**

Using three landmark Supreme Court cases, students will work with a community legal expert to explore the benefits of and limits to freedom of speech. The teaching time of this one is approximately 45 minutes. It's a natural for a community legal expert (e.g., judge, lawyer or law professor).

## Objectives

To identify benefits of freedom of speech; to identify limits of freedom of speech; to support constitutional guarantees regarding freedom of speech; to develop critical thinking and analytical skills.

## Procedure

Divide the class into groups of four students and assign each student primary responsibility for answering one of the four questions for the case assigned to their group. Give each group one case and ask students to analyze it and respond to their question. After each student responds to his/her question, the group should discuss that question to develop the best possible response. Students should be certain to have evidence to support their argument.

After each group has discussed its four questions, conduct a general class discussion of the three cases by considering the four questions associated with each case. List and define any legal terminology you may use. Emphasize that freedom of speech isn't license to say whatever you want whenever you want to say it, but rather that there are times when freedom of speech conflicts with other rights.

## Case 1

Libel is publishing a false statement about someone which damages his/her reputation. Public officials are accorded less protection from libel. They must prove that the statements were not only false and damaging, but that they were also made with either malice or reckless disregard for the truth. In March of 1960, *The New York Times* ran a full-page advertisement calling for support of blacks protesting civil rights issues in the South. It described specific abuses and activities in Montgomery, Alabama. For example, it said blacks faced an "unprecedented wave of terror," and went on to describe police harassment of Dr. Martin Luther King. No specific names were mentioned. The ad cost $4,800 and was placed by a gentleman who was known to the *Times* as a responsible person. However, the ad contained numerous inaccuracies. For example, police had been called to a college campus, but had never surrounded it and the campus dining hall had never been locked.

L. B. Sullivan, commissioner of police in Montgomery, said that some of the incidents described happened before his tenure in office. In addition, he contended that people who knew him associated him with the ad. Some had indicated that his activities threatened their friendship and that if it were their choice he would not be rehired as police commissioner. Sullivan sued the *Times* for libel.

### STUDENT QUESTIONS

1. What would be the difference between you taking space in the local paper to say derogatory things about your next door neighbor and criticizing the mayor of the city for neglecting his duties.
2. Is it necessary to prove that every statement in a signed editorial or ad be true before the paper prints it? What would be the effect of such a policy on freedom of the press?
3. When he assumed the office of commissioner, did Sullivan relinquish to some degree any of his rights?
4. What are the advantages of a totally free press? The disadvantages?

## Case 2

*Feiner v. New York* (1951), 340 U.S. 315 (1951), is the case of the unpopular speaker.

Feiner began making a speech at 6:30 p.m. on a city street corner. He wanted to publicize a political meeting to take place that evening. A crowd of about 80 people had gathered, along with two police officers.

In the speech, Feiner referred to the president as a "bum," and called the mayor "a champagne-sipping bum." Then he said that "minorities don't have equal rights; they should rise up in arms and fight for them."

As Feiner continued, there was some pushing and shoving in the crowd. One listener told the police officers that if they did not get Feiner "off the box," he would do it. Others supported Feiner's position. The police officers told Feiner to stop, but Feiner continued anyway. Feiner was arrested for disorderly conduct.

### STUDENT QUESTIONS

1. Was Feiner's speech likely to produce an immediate danger of disorder?
2. Who were the police officers protecting? Feiner himself? Feiner's expression? The general public?
3. Who should have been arrested – Feiner or the listener who made the threat?
4. If Feiner had talked only to a supportive audience should he have been arrested for criticizing the President?

## Case 3

*Burning the American Flag.*

On June 6, 1966, Street was listening to his radio, when a news report told of the shooting of James Meredith, a Southern civil rights leader, by a sniper. Angered, he took out a folded American flag, which he had displayed on national holidays, and walked to an intersection. There, in the presence of about thirty people, he burned the flag. A police officer observed him and heard him say: "We don't need no damn flag." When the officer asked him whether he had burned the flag, he replied:

"Yes, that is my flag; I burned it. If they let that happen to Meredith, we don't need an American flag."

Street was tried under a New York law which makes it a misdemeanor "publicly [to] mutilate, deface, defile, or defy, trample upon, or cast contempt upon either by words or act [any flag of the United States]."

He was found guilty and given a suspended sentence. He appealed on the ground that his free speech rights under the First and Fourteenth Amendments had been violated.

**STUDENT QUESTIONS**

1. Was the burning of the flag a form of expression?
2. Or was burning the flag an action which the state had a right to regulate? What is the distinction between expression and action?
3. Would the First Amendment protect burning a draft card as a protest against the Vietnam War?
4. What values are protected by the law against defiling the flag? What values are asserted by the act of burning the flag as a political protest? Which set of values should prevail? Why?

## Case 1: Court Decision

In *New York Times v. Sullivan*, 376 U.S. 254 (1964), the Court held that a public official could recover damages for a defamatory falsehood *only* if the libelous material was deliberately false—made with malice—or if the statement was made with indifference to the possibility of its falsehood. They did not feel that this was the case in the instance of *New York Times v. Sullivan.*

Futhermore, the Court emphasized the need for citizens in our society to have the privilege of criticizing the government and public officials, pointing to the "profound national commitment that debate on public issues should be uninhibited, robust and wide open, and that may well include vehement, caustic, and sometimes unpleasantly sharp attacks on government and public officials."

The Court concluded its statement by saying:

> As to the *Times*, we similarly conclude that the facts do not support a finding of actual malice...We think the evidence against the *Times* supports at most, a finding of negligence in failing to discover the misstatements, and is constitutionally insufficient to show the recklessness that is required for a finding of actual malice...
>
> We also think the evidence was constitutionally defective in another respect: it was incapable of supporting the jury's finding that the allegedly libelous statements were made "of and concerning" [Sullivan]. [Sullivan] relies on the words of the advertisement and the testimony of six witnesses to establish a connection between it and himself...

Case 1 decision from: Institute for Political and Legal Education, *Individual Rights.*

## Case 2: Court Decision

Law enforcement authorities may require a speaker to stop making a speech on a public street when the authorities determine that the speech is a clear danger to preserving order.

**REASONING OF THE COURT**

The Court believed that Feiner's speech passed the limits of persuasion and instead was an incitement to riot. Because there was a clear and immediate danger of riot and disorder, the Court held that the officers must be allowed to order that Feiner stop making his speech. According to the Court, it was the duty of the officers to maintain order on the streets. Looking to the particular facts of this case, the Court said that because Feiner encouraged hostility among the audience, interfered with traffic on the public streets, and ignored the officer's order to stop talking, his conviction for disorderly conduct did not violate his constitutional right of free expression.

Justice Black strongly disagreed in a dissenting opinion. The justice shifted his focus to the unpopular speaker. According to Justice Black, Feiner had been arrested for expressing unpopular views. He asserted the police officers had a duty to protect Feiner during his speech rather than to arrest him, since Feiner was exercising his constitutional right of free expression. In his view, it was the duty of law enforcement authorities to protect a person exercising his constitutional rights from those who threatened to interfere.

Case 2 decision from: *A Resource Guide on Contemporary Legal Issues...For Use in Secondary Education*, Phi Alpha Delta Law Fraternity, International. Available from publisher. Used with permission.

## Case 3: Court Decision

In *Street v. New York*, 394 U.S. 576 (1969), the Court was badly split—a 5 to 4 decision. Writing for the majority, Justice Harlan overruled Street's conviction on the ground that he was "punished merely for speaking defiant or contemptuous words about the flag." The Fourteenth Amendment prohibits states from punishing those who advocate peaceful change in our institutions. The words used by Street were not "fighting words," nor did they shock anyone in the crowd. What Street did was to publicly express his opinion about the flag. Justice Harlan concluded on this note:

> We add that disrespect for our flag is to be deplored, no less in these vexed times than in calmer periods of our history... Nevertheless we are unable to sustain a conviction that may have rested on a form of expression, however distasteful, which the Constitution tolerates and protects...

It is on this very note that the dissenters parted company with the majority. Chief Justice Warren and Justices Black, Fortas, and White saw the issue as one involving action—the burning of the flag. Each felt that a state has the right to prohibit and punish those who desecrate the flag. Justice Fortas reasoned as follows:

> One may not justify burning a house, even if it is his own, on the ground, however sincere, that he does so as a protest. One may not justify breaking the windows of a government building on that basis. Protest does not exonerate lawlessness. And the prohibition against flag burning on the public thoroughfare, being valid, the misdemeanor is not excused merely because it is an act of flamboyant protest.

Case 3 decision from: Isidore Starr's *The Idea of Liberty* (St. Paul, Minn: West Publishing Company, 1978. Available from publisher. Used with permission.)

---

*Dale Greenawald is an educator in Boulder, Colorado.*

Reprinted with permission form Constitutional Update: Liberty, a publication of the American Bar Association Special Committee on Youth Education for Citizenship.

# Liberty

## Come to the First Amendment Fair/Secondary

**Ann Blum**

Of course the right to assemble and speak out is a right of citizens, but we shouldn't forget to look at the other side of the coin, and see it as a limitation—on government. As Paul Murphy points out in *Update*, Spring, 1986, constitutions preserve the rule of law by preventing government from taking certain actions. This strategy will convey the point by focusing in on the standards that may limit government in the free speech area. The strategy will take one or two class periods. It will help students

- identify the issues posed in major Supreme Court cases pertaining to the First Amendment rights of free speech and freedom of assembly and association
- explain the protections given to and limitations allowed on these rights by the courts
- explain that governments must follow certain rules in dealing with speech and assembly issues
- develop skill in reasoning by analogy and in decision-making
- discuss the importance of freedom of association

### Procedures

Distribute both handouts (pp. 12-13) to students. Handout 1, "Decisions for the Fair Director," explains the activity. The second handout, "Relevant Court Cases," provides the students with information for decision-making. Students can do the exercise individually, with written responses, or in small groups with a reporter for each group.

After completing the "Decisions for the Fair Director" activity, students should discuss and evaluate their decisions. Use the "Commentary on Decisions for the Fair Director" for this discussion/evaluation. An attorney versed in constitutional law could contribute greatly to the discussion of the situations, cases, and issues.

After the review of student decisions, ask the class

- What are the main issues in these cases and situations?
- What limitations have the courts allowed on the rights to associate and assemble?
- What protections have the courts clearly given for the rights to assemble and associate?
- Some of the situations evoke what is called the "heckler's veto." Ask students if they think it is right to give way to threats by canceling events. What should be done?
- What rules, if any, might the director have established beforehand to regulate the problems confronted?
- Should any of the groups have been excluded? Why or why not?
- Why is freedom of association so important? What are some threats to it?

### Commentary on Decisions for the Fair Director

1. The decision in *Hague v. CIO* suggests that this is not good advice. The city ordinance appears to be a vague one, without narrow standards, that the courts would probably hold unconstitutional. Without such standards, any action to abridge rights taken by a fair director would be arbitrary and also unconstitutional.
2. Decisions on the "public enemy" laws suggest that the director could not turn down the request of the Super Sniffs without proof that they were going to use their booth to plan or commit a crime. People have a right to associate as long as their purposes are not criminal or disruptive.
3. The decision in the Skokie case indicates that this action would not be accepted by the courts. What if the director required such a bond of each exhibitor? This would probably be accepted by the courts if the amount of the bond were reasonably set—but the issue is still an open one. Note that governments have sometimes canceled events rather than hold them when associations like the Klan, held to be undesirable, want to take part.
4. Definitely not. Although the cases are more extreme, note decisions concerning right to assembly in *Edwards v. South Carolina, Feiner v. New York, Gregory v. City of Chicago*, and the Skokie cases. The director should instead act to alert police to assure protection for the union exhibitor if it is necessary.
5. The director should not close the booth. As cases indicate, it is not illegal per se to be a member of the Communist Party. In regard to the pamphlets, note that the courts have held that abstract recommendations for political violence, like these, are protected by the First Amendment. See decisions in *DeJonge v. Oregon* and Communist Party membership cases.
6. There do not appear to have been any grounds—except dislike—for refusing this group a booth (see *Nietmotko vs. Maryland*). It is wiser to allow them to stay even though they had been turned down. This is a very complicated legal issue—the courts would want to examine the procedural scheme set up for the permit procedure, the time available for judicial remedies, etc. Under the circumstances, the director couldn't assume *Poulos v. New Hampshire* would be a precedent.
7. *Edwards v. South Carolina, Feiner v. New York*, and *Gregory v. City of Chicago* are all relevant to the issues posed. The cases indicate that the first responsibility of the police is to protect the speakers and control the hecklers. If all else fails, then the speaker can be removed.

---

*Ann Blum is Law Education Coordinator, Governmental Education Division, of the Carl Vinson Institute of Government at the University of Georgia. This strategy is adapted from the teachers manual for* An Introduction to Law in Georgia *by Ann Blum and Jeannette Moon, Athens: Vinson Institute of Government, University of Georgia, in press. The strategy was reviewed by Paul Kurtz, a professor of law at the university, for legal accuracy.*

## Decisions for the Fair Director (Handout 1)

You are one of the directors of a fair of local associations to be held in the park in front of your city's courthouse. The purpose of the fair is to celebrate our American rights to the First Amendment freedoms of expression and association. There is no thought or provision for excluding any organization. Through advertisements, you invite associations to apply for space for fair exhibition booths. Associations can use the booth spaces for displays or simple programs explaining and touting their organizations.

Unfortunately, problems about participation arise almost immediately. You are faced with a series of dilemmas. Obviously, you don't want to step on the rights of any group. On the other hand, you don't want the fair to be a series of disturbances. In dealing with the situations described below, use the handout "Relevant Court Cases" to guide your decisions. For each situation, record your decision and your reasons for making it. Cite any relevant cases.

### Situations

1. The American Nazi Party imediately requests a booth. Because of the Jewish population of the city, you are very uneasy. A fellow fair director suggests you refuse the party a booth on the basis of a city ordinance that says permits for street meetings or similar gatherings can be refused "to prevent riots and disturbances." Should you follow her advice?
2. The Super Sniffs, a group widely suspected of being drug smugglers and dealers, requests a booth. This is another group you don't want to participate. What can you do, if anything, to refuse them space?
3. A request from the Ku Klux Klan for space makes you wonder why you accepted this job. You are advised to ask them to post a bond of $100,000 to participate, because this will surely keep them out. Should you do this? Why or why not?
4. A major issue in your town is the unionization of the local hat factory. The union requests a booth—and you receive several threats by phone that there'll be trouble if those union blankety-blanks are there. Because of these threats, can you refuse them space?
5. You receive a request for a booth from the local chapter of the Communist party. You allow them space and then, immediately after the fair opens, a man bursts into fair headquarters shouting that you should go to jail for allowing the Commies to participate. He says they even have pamphlets—he waves a handful of dull-looking papers at you—that indicate the overthrow of the government may be necessary to attain their ends. Those, too, are illegal, he shouts. Is he right? Should you close the booth?
6. You refuse a booth to what you regard as a very pushy religious group. They are particularly offensive because they never bathe and rarely change clothes. They come anyway and set up a booth. You ask them to leave; they refuse. You try to decide whether to ask the police to eject them. Should you do this?
7. A hostile crowd gathers around the booth of a pro-choice group. They become loud and jostling. Police advise you that trouble may result. You ask the pro-abortion group to leave. When they refuse, the police arrest them for breaching the peace. Was this the way to handle the situation? Would it have made a difference if the crowd had begun to throw bottles and rocks?

## Relevant Court Cases (Handout 2)

**COMMUNIST PARTY MEMBERSHIP CASES**

The question of whether membership in the Communist Party can be made illegal by a statute was confronted by the Supreme Court in the late 1950s and early 1960s. In *Yates v. United States* (354 U.S. 298 (1958)), the Court marked a difference between advocating abstract doctrines to overthrow the government and advocating action. The former was held to be permissible but not the latter. (Or, as the Court said in *Brandenburg v. Ohio* (395 U.S. 444 (1969)), a case concerning a Ku Klux Klan speaker, the "mere abstract teaching" of a moral need to resort to force and violence is not the same as "preparing a group for violent action and steeling it to such action." Such teaching is protected by the First Amendment.)

In *Scales v. United States* (367 U.S. 203 (1961)), a divided Court struggled with the recognition that the party has both legal and illegal aims. Being a "knowing" member in an organization advocating overthrow of the government by force could be a felony, the Court said. But being a member "for whom the organization is a vehicle for the advancement of legitimate aims and policies" should not be a crime.

**DEJONGE V. OREGON 229 U.S. 353 (1937)**

In 1934 Dick DeJonge spoke at a meeting of the Communist Party in Portland, protesting actions used to break a longshoreman's and seaman's strike. He was arrested and convicted for "assisting in the conduct of a public meeting" held under the auspices of the Communist Party. His action was said to violate an Oregon law that prohibited advocating violence as a means of political reform.

The Supreme Court reversed the decision, holding the state law unconstitutional. The Court said that "peaceable assembly for lawful discussion cannot be made a crime." Nor can persons assisting in the conduct of such meetings be "branded as criminals on that score."

## Relevant Court Cases (Handout 2)

### EDWARDS V. SOUTH CAROLINA 372 U.S. 229 (1963)

In early 1961, about 190 black students marched to the park-like grounds of the state capitol in Columbia to protest segregation laws. Law enforcement officers told them as they entered the grounds that they had a right to do so as long as they were peaceful. The demonstrators marched, listened to a speaker, and sang—all in an orderly way. There was no obstruction of traffic. Onlookers gathered, but no one actually caused trouble. However the police and city manager were uneasy. The demonstrators were warned they would be arrested if they didn't disperse in 15 minutes. They refused and were arrested and convicted under the state breach-of-peace statute.

The Supreme Court, in a 8-1 decision, held the state statute vague and indefinite, upholding the demonstrators' rights under the First and Fourteenth Amendments to protest peaceably on public grounds.

### FEINER V. NEW YORK 340 U.S. 315 (1951)

Feiner, a Syracuse University student, was addressing a crowd of 70 to 80 people on a city sidewalk. Some of the audience were hostile, and the police, summoned by a complaint, asked Feiner to stop talking after at least one threat of violence. Feiner refused and was arrested and convicted for violating the state's disorderly conduct law.

The Supreme Court, by a 6-3 margin, upheld the conviction. The majority opinion made clear that Feiner was not arrested for making his speech but because of audience reaction. His speech had created a clear and present danger of riot or disturbance. The police, the Court said, could act in such circumstances.

### GREGORY V. CITY OF CHICAGO 394 U.S. 111 (1969)

Accompanied by police, Dick Gregory led about 85 marchers to the home of the mayor to protest delays in desegregation of public schools. Crowds gathered and began to hurl not only threats and obscenities but rocks and eggs. The marchers remained orderly. The police asked the protesters to disperse. When they refused, they were arrested and charged with violating Chicago's disorderly conduct ordinance.

On appeal, the Supreme Court overturned the decision. An orderly protest march, it said, falls under protection of the First Amendment. The city's ordinance, the Court held, was too vague.

### HAGUE V. CIO 307 U.S. 496 (1939)

Frank Hague, mayor and political boss of Jersey City, New Jersey, was anti-union. When the Committee for Industrial Organization (CIO) requested a permit for a street meeting, it was refused under a city ordinance, which said a permit could be turned down to prevent "riots, disturbances, or disorderly assemblages."

In a 7-2 ruling, the Supreme Court declared the ordinance void. The reasoning was that without narrow standards (or guidelines), it allowed one person to suppress the rights of free speech and assembly in a public place solely on the basis of his or her opinion that the activity might cause a disturbance.

### NIEMOTKO V. MARYLAND 340 U.S. 168 (1951)

A group of Jehovah's Witnesses were refused a permit to hold Bible discussion meetings in the town park. There was no ordinance, but local custom required a permit be obtained from the park commissioner, with appeal on refusal to the city council. The Jehovah's Witnesses held the meeting without a permit. They were arrested and convicted for disorderly conduct.

The Supreme Court reversed the decision. It said that a permit requirement is invalid as a prior restraint "in the absence of narrowly drawn, reasonable and definite standards for the officials to follow." The only apparent reason for refusal of the permit in this case was dislike.

### POULOS V. NEW HAMPSHIRE 345 U.S. 395 (1953)

Like *Niemotko v. Maryland*, this case concerned denial of a permit for a park meeting for a group of Jehovah's Witnesses. This group also held their meeting anyway.

In this case, the Supreme Court, however, upheld the conviction and fine of Poulos. It held that the ordinance was valid, but the decision to deny the permit was arbitrary. However, Poulos, it said, had judicial remedies available to question the council's decision. He did not use them. To take the law into one's own hands, it said, is a dangerous course of action.

### PUBLIC ENEMY CASES

In the 1920s and 30s, faced with very visible gangsterism, several states enacted so-called "public enemy" laws. These declared persons gangsters who belonged to groups consisting of people who had been convicted of crimes or ordinance violations. The courts found the basic terms of these laws too vague. In its ruling on a New York law, the New York Court of Appeals said that a state must prove that an association of "evil-minded people" are planning or doing something unlawful. "The consorting alone is no crime." (*People v. Pieri*, 269 NY 315, 199 N.E. 495 (1936)).

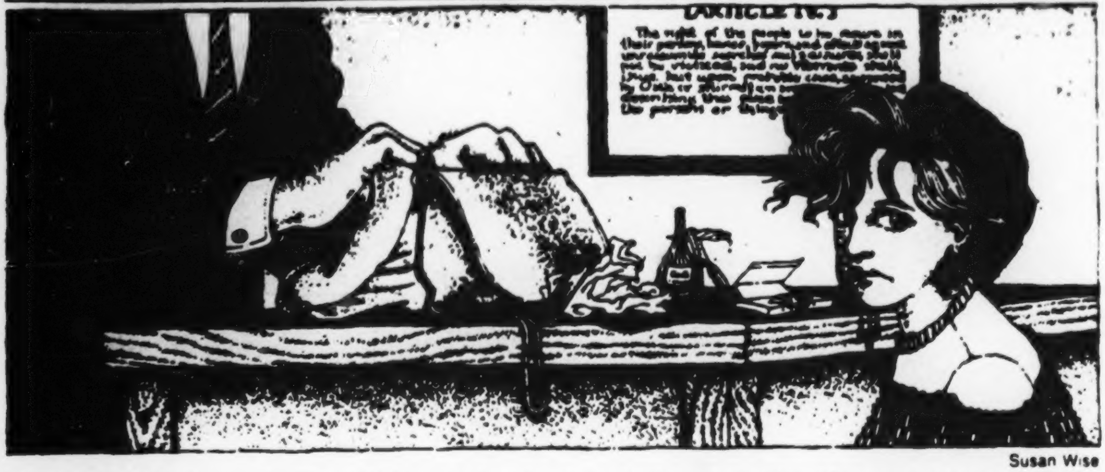
### AMERICAN NAZI PARTY V. VILLAGE OF SKOKIE 373 N.E.2d. 21 (1978)

In 1977, the city of Skokie, Illinois, sought to prevent a march of the American Nazi Party through the predominantly Jewish community. It tried to do this by requiring them to post $300,000 bond for a parade permit. A federal appeals court said that a community could not use its parade-granting power as a means of suppressing free speech and assembly. They said the Nazis could march without posting the bond. Having gained the right, the Nazis decided not to hold their demonstration in Skokie.

BEST COPY AVAILABLE

# Fundamental Freedoms

## Teaching About Search and Seizure/Grades 9-12



Susan Wise

Here is a "model" class on the Bill of Rights, search and seizure and student rights and responsibilities.

Before going to class, get to know the subject. Review the brief description of *New Jersey v. T.L.O.* on page 11.

### Why You Are Here

- To introduce to students the meaning of the Fourth Amendment's protection against unreasonable search and seizures and the source of that protection in the constitutions of the United States and your state.
- To have students apply their Fourth Amendment protections to situations which arise within a school setting.
- To have students understand the reasons why limitations exist to students' Fourth Amendment protections.
- To have students recognize how the responsibilities of school administrators may conflict with students' Fourth Amendment protections.
- To give students the opportunity to discuss constitutional issues which directly affect them.

### Procedures

Classroom activities can be performed within the 45 minute time period.

Questions to start you out include

- "Do you have any rights?"
- "What are they?" (This can produce a myriad of variations.)
- "Where do they come from?" (Here you can start from the particular [school rules] and go all the way to the Constitution.)
- "Where does it say in the Constitution that you have a right not to be searched?" (Here you get into the Fourth. Use concrete examples: Find a student with a purse, gym bag, etc. and ask if you can look into it. If not, why not?)

Following are four hypotheticals, any of which you can use to spark discussion of rights and responsibilities in a school search situation. (One way to relate the situations more directly to the students you're talking with is to change the names of the students in the hypotheticals to names of students in your class.)

You can either read the hypothetical to the class or summarize it for them before getting into the suggested questions.

### Whose Locker Is It?

Dwayne's high school had been having many problems with vandalism. In the past week there had been a fire in the girls' rest room, four windows broken, and a small explosion caused by three cherry bombs in the boys' locker room in the gym. Rumors were running all through the school as to who caused the explosion. One such rumor made it to the principal's office when two students told the principal that they had heard that Dwayne had a bag of cherry bombs in his locker.

The principal called Dwayne into his office and asked him if he had any cherry bombs in his locker. Dwayne said he did not, but the principal was not convinced. He told Dwayne that if he did not have the cherry bombs in his locker, then he would not mind the principal's opening the locker to make sure. Dwayne said he did not want anybody going through his locker and would not open it up for the principal.

The principal became angry and said he would open it anyway and called the custodian to bring the master key. Dwayne became very upset and yelled at the principal that he knew his rights and that the locker was his and no one could open it without his permission. Disregarding what Dwayne said, the principal went to Dwayne's locker, opened it with the master key and found all kinds of art supplies which had been missing from the art room, but found no cherry bombs.

**SUGGESTED QUESTIONS FOR DISCUSSION**

Do you think the principal had good reason to open and search Dwayne's locker?

Reprinted with permission from LRE Project Exchange, Spring 1986, a publication of the American Bar Association Special Committee on Youth Education for Citizenship.

Do you think the principal had a responsibility to the students and teachers to follow all leads in order to find out who set off the explosion in the boys' locker room?

Who do you think owns the lockers in schools?

Can you think of how use of a school locker may be different from use of a locker in a bus station, or a post office mail box?

Do you think a principal should have the right to open and search a student's locker without that student's permission?

Can you think of any situations where you might open and search a student's locker without permission if you were a principal?

Did Dwayne know his rights?

May a principal open and search a student's locker without the student's permission?

Do you think Dwayne set off the explosion in the boys' locker room? Why? Why not?

Did the principal find in Dwayne's locker what he was looking for?

Do you think a policeman can open a student's locker without that student's permission?

What does a policeman need to have before he/she could open a student's locker?

What is a search warrant? When is one used? Who uses search warrants?

## Warriors v. Giants

The past two weeks at the high school had been terrible. Four students were sent to the hospital, two students arrested, and all the students frightened about their safety as a result of a gang war between the Warriors and the Giants taking place not only in the school but also in the community. The two gangs began warring when the Warriors blamed the Giants for slashing the tires on the car of one of its members. The Giants denied having done it, but soon tempers began to rage and within two weeks there was a near riot in the school cafeteria resulting in the injuries and arrests.

In order to ensure the safety of the students and the staff, the principal decided that each student would be frisked upon entering school to check for weapons. Many of the students thought this was a good idea, but others believed the principal had no right to frisk them and would not allow themselves to be frisked. Some of these students were not members of either gang. When they refused to be frisked, they were not permitted to enter the school.

### SUGGESTED QUESTIONS FOR DISCUSSION

Why did the principal decide to frisk each student as he/she entered school?

What exactly takes place when a person is frisked?

Does a principal have the responsibility of maintaining a safe school?

Do you think that by frisking each student as he/she enters school the students and teachers will be safe? Why? Why not?

Do you think the principal has the right to frisk students before they enter the school?

Why would a student object to being frisked before entering school?

Would you mind being frisked each morning before you entered school? Why? Why not?

Do you think a policeman instead of the principal should be the person doing the frisking at the school?

What if a parent had a meeting at the school? Would the principal frisk the parent?

Do you think the principal frisked each teacher before he/she entered the school?

Do you think the teachers would object to being frisked before they entered the school each morning?

## Missing Books

The school librarian, Mr. Richland, informed the social studies department faculty that three expensive books on ancient Greece, which had been purchased recently by the school for reserve use but had not yet been checked in, processed, and labeled by the library, were already missing. Miss Sullivan, a world history teacher, said that she had recently given her students a term paper assignment and that she knew that one boy had decided to write about the government of Athens. She suggested that the librarian check with the boy, Bruce Dandridge.

Because of a rash of book thefts during the past year (hundreds of dollars worth of books had "disappeared"), Mr. Richland decided to take the information directly to the school principal. He asked that Bruce's locker be inspected to search for the books.

The principal, in the librarian's presence, opened the boy's locker while Bruce was in class. They discovered the new ancient history books, which had not been checked out from the library. When confronted with the evidence, Bruce admitted that he had taken them, but argued that his right to privacy had been violated by the locker search. Because he had been in some disciplinary trouble before in school, and in view of the strict school rules against misappropriation of school property, a suspension hearing was called, and Bruce came with his parents' and their family lawyer.

**Questions.** What are the main issues raised in this case? How does the interest of Bruce's privacy balance out against the school's interest in preventing theft? If this case were to come before a court, how do you think it would be decided?

## Police Called In

Frank Perkins had a free period plus his lunch period back to back on Monday. Since school rules permitted students to leave the grounds when they did not have class commitments, he went downtown to the Sound and Fury record store. The store owner, Jack Maloney, was sure that he had seen Frank put one or more albums under his coat and leave the store without paying for them, but he was unable to catch up with Frank.

As an independent businessman, Mr. Maloney was concerned about the increased costs of shoplifting. He thought he recognized Frank as a student from nearby River View High School, and upon checking with the school over the phone he was able to ascertain his name.

Later that afternoon, Detective Shableski of the local police came to the school following a complaint from Maloney and asked the school principal whether he could have permission to search the boy's locker for the records. Consent was given.

**Questions.** If stolen record albums are found, are they legally admissible evidence? A police search without a warrant is valid only if consent has been given. Who has the authority to give consent? Only Frank Perkins?

If you are a student in school, do you give to the administration the right to consent to a search of your locker when it issues you a locker. If a locker is protected from warrantless search, can you be forced to give up that protection by signing a release?

### AFTER LEAVING THE CLASSROOM

If you said you would send students or the teacher material, don't forget to do so.

A letter to the class thanking them for the opportunity to discuss a very important subject is a nice touch.

## New Jersey v. T.L.O.

On January 15, 1985, a divided United States Supreme Court issued a decision on a school search and seizure issue, *New Jersey v. T.L.O.*, 53 U.S.L.W. 4083.

### FACTS

A high school principal searched the purse of a 14-year-old female student after the student denied an accusation by a teacher that she was smoking cigarettes in a nonsmoking area, a violation of a school rule. The search resulted in the discovery of cigarettes and rolling papers, the latter item, in the experience of the principal, being associated with marijuana. The discovery of the rolling paper prompted a more thorough search of the purse which revealed marijuana, a pipe, and other items implicating the student in marijuana dealings.

The principal notified the authorities and subsequently turned over the seized evidence to the police, who on the basis of the evidence and a confession, filed delinquency charges. At her delinquency hearing, T.L.O. sought to suppress the evidence and the confession because the former was alleged to have been seized in violation of the Fourth Amendment while the latter was alleged to have been tainted by the alleged unlawful search.

### DECISION

The Court was asked to determine whether the Fourth Amendment's "prohibition on unreasonable searches and seizures applies to searches conducted by school officials." A majority of the Court held that it did.

The majority reasoned that school officials, in carrying out searches, were representatives of the state and not merely surrogates for the parents.

Having determined that the Fourth Amendment was applicable to school officials, the Court was faced with a determination as to the standards governing such searches. In so deciding, the Court had to strike a "balance between the school child's legitimate expectations of privacy and the school's equally legitimate need to maintain an environment in which learning can take place." The majority held that "the legality of a search of a student should depend simply on the reasonableness, under all the circumstances, of the search."

The reasonableness of a search is determined by (1) "whether the search was justified at its inception;" and (2) "whether the search was reasonably related in scope to the circumstances which justified the interference in the first place." The Court held that "when there are reasonable grounds for suspecting that the search will turn up evidence that the student has violated or is violating either the law or the rules of the school" the search is justified at its inception.

The Court noted that the search must not be "excessively intrustive in light of the age and sex of the student and the nature of the infraction."

The extent of a student's protection from unreasonable searches and seizures usually depends upon whether (1) a school or a police official conducted the search, and (2) the search is of one's person or of a place.

Although it is clear that the Fourth Amendment protects people and not places, the nature of the place may determine whether the person had a reasonable expectation of privacy. Thus, courts have upheld warrantless searches of lockers by school officials where it was known that school officials had a master key and reasonable grounds existed for the search. An authorized and voluntary consent to a search by a student will usually validate a search that would otherwise be illegal.

Courts have found that a student has no reasonable expectation of privacy in his/her school locker but have usually provided minimal safeguards where a student's clothing or body has been searched. A recent court ruling upheld a decision that dragnet sniffing of children by dogs (to search for drugs) was impermissible, but noted that such sniffing of cars or lockers by dogs was permissible.

# Justice

**Searches Without Warrants/Grades 9-12**

**Steve Jenkins**

Reprinted with permission from Constitutional Update: Justice, a publication of the American Bar Association Special Committee on Youth Education for Citizenship.

The Fourth Amendment protects "the right of the people to be secure in their persons, houses, papers and effects, against unreasonable searches and seizures..." Does this mean that all searches are prohibited? (No, persons are only protected from "unreasonable searches and seizures.")

What is a reasonable search? Can a search without a warrant ever be reasonable? Brainstorm students' responses to these two questions. By brainstorming, the students will probably identify several situations in which they believe warrantless searches are reasonable (e.g., searches by metal detectors at airports).

Although the Fourth Amendment generally emphasizes the warrant requirement for legal searches, the courts have recognized certain circumstances where warrantless searches are considered legal. The following are examples of legally recognized warrantless searches:

- *Consent to Search.* If a person gives permission to law enforcement officers to search him or her, and his or her property, then such a search may be conducted without a warrant. Generally the courts have only recognized a person's right to consent for that which a person has control (that is, the person and the person's property). The courts have recognized a few circumstances where a person may give consent to search a third party (for example, a parent giving consent to search his or her minor child).
- *Border and Airport Searches.* These searches involve a type of implied consent (that is, everyone choosing to travel by air, or choosing to enter the country, is aware of the search that may be conducted). Specifically, the courts have recognized the right of customs officials at U.S. borders to examine vehicles, baggage, purses, wallets, or similar belongings.
- *Search Incident to a Lawful Arrest.* If a police officer arrests a person, the courts have recognized as legal the police officer's search of the arrested person and the area immediately surrounding the person. The courts have recognized this warrantless search in order to protect the officers from hidden weapons that the arrested person may have, as well as to prevent the arrested person from destroying evidence.
- *Stop and Frisk.* Much like the recognized warrantless searches incident to a lawful arrest, the courts, in order to provide additional protection for police officers, have upheld the right of a police officer to conduct a warrantless search if the officer believes that a person is acting suspicious. An officer is also permitted to conduct a warrantless search if he or she has reasonable suspicion that a person may be carrying a concealed weapon.
- *Vehicle Searches.* The courts have recognized a police officer's authority to search a vehicle for illegal substances (often referred to as contraband). However, the police officer must have probable cause to believe the vehicle contains contraband.
- *Plain View.* The courts have held that if an object connected with a crime is in plain view of a police officer acting lawfully, then the object can be seized without a warrant. For example, if a police officer is patrolling in a neighborhood and right in plain view observes several marijuana plants growing in someone's yard, the police officer may seize the marijuana plants without a warrant.
- *Hot Pursuit.* The courts have said that police officers in hot pursuit of a criminal suspect are not required to obtain a search warrant before entering a building that they have observed the suspect enter.
- *Emergency Situations.* The courts have upheld warrantless searches in the following emergency situations: searching a building following a telephoned bomb threat; entering a building after smelling smoke or hearing screams; and other emergencies involving preservation of life or health.

Ask students to consider the following cases and determine if, in their opinion, the warrantless searches were reasonable.

## Case 1

Railroad officials in San Diego, California, observed two persons loading a brown footlocker onto a train bound for Boston, Massachusetts. The officers became suspicious when they noticed that the footlocker appeared to be unusually heavy for its size. They also observed that talcum powder was leaking from the trunk. Talcum powder is often used to hide the odors of marijuana and hashish. The railroad officials reported these suspicions to the federal agents in San Diego. The federal agents relayed this information to federal agents in Boston, Massachusetts.

When the train arrived in Boston, several days later, federal narcotics agents were waiting. The agents had a police dog with them. The dog had been trained to detect marijuana. The agents did not have a search warrant. When the footlocker was removed from the train, the police dog reacted such a way that the agents had even greater suspicion that there were illegal drugs in the footlocker. A man drove his car up to the loading dock, and when he and some companions heaved the footlocker into the trunk of the car, the agents moved forward and arrested the man and his companions. An hour and a half later, the agents opened the footlocker and found a large quantity of marijuana.

The agents did not have a search warrant or the consent of the footlocker's owner. The agents claimed that the warrantless search of the footlocker was reasonable because it was incidental to an arrest. In addition, the agents claimed that the footlocker was in plain view in the car trunk when it was seized. The footlocker owner claimed that the warrantless search of his private property was a violation of his Fourth Amendment protection against unreasonable search and seizure.

*What do you think?*

1. What arguments might the federal agents make to justify this warrantless search?
2. What arguments might the footlocker owner make to justify suppressing the evidence seized during what he claims was an illegal search?
3. In your opinion, did the federal agents conduct a lawful, reasonable warrantless search? Briefly explain your answer.

**ANSWERS TO CASE 1**

1. Student answers will vary but may include the following: The federal agents might argue that the warrantless search was legal because it was a search incident to the lawful arrest of the footlocker owner who was suspected of possession of illegal drugs. The agents might also claim that the search and seizures fall under the "plain view" circumstances. That is, if the object (i.e., the footlocker) connected with a crime is in plain view of a police officer (i.e., federal narcotics agents) acting lawfully, then the object can be seized without a warrant.
2. Answers will vary, but may include the following: The owner of the footlocker might argue that a search incident to a lawful arrest only permits the federal agents to search him and the area immediately surrounding him. The footlocker was not within the immediate area, and besides, the owner was under arrest and in the police custody, and the footlocker did not pose a threat of hidden weapons; so if the federal agents wanted to search the footlocker, they should have presented their facts to a judge and asked for the issuance of a search warrant. After all, the federal agents actually had at least two days to take the information from the San Diego federal agents and apply for a search warrant based upon the facts presented by the railroad officials.
3. Answers may vary and students should give reasons to support their answers.

Note. This case is based on *United States v. Chadwick*, 433 U.S. 1 (1977). The U.S. Supreme Court held that the footlocker owner's Fourth Amendment rights had been violated. The Court ruled that placing personal effects in a footlocker protects them from unreasonable governmental invasions of privacy. The Court also agreed with the footlocker's owner that the federal agents should have applied for a search warrant. The Court said it was unreasonable for the government to search without a warrant when the agents had over two days and sufficient facts to obtain a search warrant from a judge.

## Case 2

A high school security guard noticed a student walking down the hall with large bulges in the rear pockets of the student's jeans. The security guard thought that the bulges appeared to be in the shape of pocket knives. The guard stopped the student and and asked him what he had in his pockets. The student told the guard that the bulges were pencils and he walked on. The guard asked to see the pencils, but the student continued to walk away. The guard shouted to the student to stop, but the student acted as though he didn't hear the guard. The guard caught up with the student, patted him down, and removed two knives from the student's pants pocket. Later that day, after being advised of his rights, the student admitted to police that he owned the knives.

The student was placed on probation by a juvenile court for possessing knives on public school grounds in violation of the California Penal Code. The student appealed his conviction, contending that the school security guard had violated the student's Fourth Amendment protections against unreasonable search and seizure; and therefore, since the knives had been seized illegally, the knives should have been suppressed as evidence against the student. School officials claimed that the security guard was fulfilling his duties under the California Education Code to ensure "the security of school district personnel and pupils and the security of the real and personal property of the school district."

1. What arguments might the security guard make to justify his warrantless pat search of the student?
2. What arguments might the student make to justify his claim that the seized knives should be suppressed as evidence?
3. In your opinion, did the security guard conduct a lawful warrantless search of the student? Briefly explain your answer.

**ANSWERS TO CASE 2**

1. Answers will vary but might include the following arguments: As a security guard he was responsible for protecting school personnel and pupils, as well as real and personal property of the school district. This duty is much like that of a police officer, and like a police officer, the security guard should have the right to stop and frisk a student for weapons if the guard reasonably believes that the student is behaving suspiciously and is likely to be armed. The courts have upheld these types of warrantless stop and frisk searches.
2. Answers will vary but might include the following arguments: The student might claim that the security guard did not have reasonable suspicion to stop him, let alone search him. Therefore the security guard's action was unreasonable and a violation of the student's Fourth Amendment protection from unreasonable searches and seizures.
3. Answers will vary and students should give reasons to support their answers.

Note. This case is based on a recent California case (181 Cal Rptr 856). The California Court of Appeal held that the security guard for the school was properly exercising his duties of employment. The guard was acting properly to protect the security of the school's personnel. Therefore, the security guard conducted a proper stop and frisk search.

---

*Steve Jenkins is law-related education director of the Bar Association of Metropolitan St. Louis. He was assisted by Nancy Eschmann of the bar association in preparing these activities for publication.*

From: Righting Your Future: LRE Lesson Plans For Today and Tomorrow published by CRADLE, Center for Research and Development in Law-Related Education in cooperation with Wake Forest University of Law, Winstom-Salem, NC, 1989.

---

# YOU ARE THE SUPREME COURT: DECIDE!

*Michael H. Reggio*

## INTRODUCTION

This lesson uses large and small group work to facilitate understanding of the First and Fourth Amendments. Students will be given the basic facts of three recent court cases and then the class, as a whole or in groups, will act as the Supreme Court and give its ruling on each. After the class has ruled, it will be informed of the real High Court's decisions. As the students progress through the three cases, they will be able to see an evolution in constitutional interpretation, especially from the concepts put forth in *Tinker v. Des Moines Independent Community School District* (1969) to the ones developed in *Hazelwood School District v. Kuhlmeier* (1988). Students should read the First and Fourth Amendments before beginning this lesson.

## RATIONALE

It is extremely important that students understand their rights under the First and Fourth Amendments not only as adults, but as students. For many students, this will be a controversial lesson and will force them to develop opinions of their own. The intent of the lesson is to use techniques of basic knowledge, comprehension, and application, as well as analysis, synthesis, and most importantly evaluative techniques. It may be taught during the judicial section of a government or civics course, or when discussing the Constitution and amendments in a U.S. history, government, or civics course.

## AUDIENCE

This lesson is appropriate for students in middle school through high school.

## TIME TO COMPLETE

One class period for each case for a total of three days.

## GOALS

As a result of this lesson students will:

- understand the First and Fourth Amendments and how they apply to students, as well as to adults;
- developed their own opinions and be able to compare them to the law of the land;
- interact with other group members;
- understand how difficult it is for the Supreme Court to make a ruling;
- understand how decisions evolve in the High Court.

## MATERIALS

This lesson plan with Appendices.

## PROCEDURE

1. Discuss the First and Fourth Amendments. Emphasize the ideas of freedom of expression, freedom of the press, and freedom from unreasonable search and seizure without PROBABLE cause. Explain to the students that for the next three days the class is going to discuss some court cases and they are going to sit as the Supreme Court. They will make their decisions based on their knowledge of the First and Fourth Amendments. After the class has voted and settled the first case, the teacher will explain what the Supreme Court of the United States did. Based on that decision, and the students' knowledge of the First and Fourth Amendments, they will repeat the process with a second and then a third case. Begin by reading the first court case in Appendix One (or distribute copies of it). Discuss the case. Involve the students in the discussion. Try to pick out leaders on each side who have opposite points of view. If you wish, allow them to form groups to discuss and develop arguments to support their point of view. In each case make sure that the students understand the issues before the court. For example, in *T.L.O.*, should the standard be different for a school search than for a search of an adult accused of crime? What is the difference between "probable" and "reasonable" cause? As students discuss the

case, you may want them to list the facts of the case. If they are in groups (and especially in the higher grade levels), you may want them to write majority and minority decisions. When discussion has stopped, have the class vote. Compare that vote with the decision of the Court found in Appendix Two. Read the decision or distribute copies of it. This concludes the first case. Appendices Three and Four concern the second case, while Appendices Five and Six deal with the third case.

2. **Debriefing**

   You could use a number of questions to debrief students.

   a. Before *T.L.O.* what was the basis for deciding free speech cases?
   b. In light of today's Court interpretations, how do students' and adults' freedom of expression and illegal search and seizure differ?
   c. How does your interpretation of the First and Fourth Amendments compare to the Court's interpretation?
   d. What kind of problems do you feel that the Court faces in determining what the Constitution says?
   e. What are the major differences between the *Tinker* and the *Hazelwood* decisions?
   f. If a number of students put up a banner protesting the CIA's activities in South America, would the principal with support from the school board be able to force them to take it down? Why?
   g. Could you as a Supreme Court justice keep your own personal opinions out of your decisions? Should you keep your personal opinions out of your decisions?
   h. In light of decisions already made, where is the Supreme Court headed on this issue?
   i. How do these decisions affect you as a student?
   j. How does your opinion compare with what it was before you began this lesson?

## EVALUATION

There are a number of ways to evaluate this lesson. On the most basic level, the teacher could construct an exam testing the basic facts. Using higher level thinking skills, the students develop an essay or oral presentation discussing how the student agrees or disagrees with the decisions of the Court or how the criteria of "reasonableness" evolved through the three cases.

## TIPS FOR THE TEACHER

- This lesson depends on group interaction. Groups should be put together carefully, making sure that even the least able students may give input. Care should be taken to make sure students understand the terminology used.
- Other court cases may be discussed using this process. An excellent source to find further discussion of cases is through the Civil Liberties Union of Massachusetts, 19 Temple Place, Boston, MA 02111.

## BIBLIOGRAPHY

"Excerpts From Opinions Ruling on Censoring High School Newspaper," *New York Times, January 14, 1988.*

"Hazelwood: Censorship Upheld," *Bill of Rights Network,* Volume 1 (Winter 1988).

"'Reasonableness'—The High Court's New Standard for Cases Involving Student Rights," by Lowell C. Rose, *Phi Delta Kappan* (April 1988).

*The United States Law Week*, January 12, 1988.

## APPENDIX ONE

### *T.L.O. v. New Jersey* (1985)

A teacher at a high school discovered a fourteen year old student and a friend smoking cigarettes in the school bathroom. Smoking was a violation of school rules. The teacher took them to the Assistant Vice Principal. The students denied that they were smoking and insisted that they never would smoke. The Vice Principal demanded to see her purse. Glancing into it, he found a package of cigarettes and a package of cigarette rolling papers commonly associated with the use of illegal drugs such as marijuana. The Vice Principal decided to search the purse thoroughly. He found some marijuana, a smoking pipe, a large quantity of money, plastic bags, an index card showing that a number of students owed her money, and two letters that indicated that she was selling drugs to other students.

The State brought delinquency charges against the accused student. The attorney for the student stated that the evidence found in her purse was not obtained legally and requested that it not be used against her. The lower courts refused and she was adjudged to be delinquent. The New Jersey Supreme Court reversed the decision and held that the search of the purse was unreasonable.

Subsequently, this case went before the Supreme Court. The issue which was before the Court was whether the search violated the student's rights under the Fourth Amendment, specifically as it pertained to illegal search and seizure. The Court set a standard that was needed to justify a student search in a school. The Court questioned, should the standard for a school search be different than the search of an adult accused of crime? Further, the Court decided whether the legality of a search should be based on "PROBABLE cause," "substantial basis" or "on REASONABLE cause under the circumstances." In most Fourth Amendment cases, the standard of probable cause would be used. The second standard, the "substantial basis," is a middle-level standard. The third and lower standard is the standard of "reasonableness." You decide the case.

### APPENDIX TWO

### SUPREME COURT DECISION IN *T.L.O.*

The Supreme Court ruled that the actions of the school were legal and that the search of the girl's purse was reasonable. The Court held that the Fourth Amendment applies to school searches, but, instead of being surrogates for parents, school officials were representatives of the state. The Court made a distinction using the term "reasonableness." School officials do not need "probable cause" to search a student's belongings if there is a "reasonable suspicion" that the student has broken or is breaking the law or school rules. The Court, in effect, ruled that students have no reasonable expectation of privacy when it comes to their school lockers as long as there are "reasonable grounds" for the search. This case involved two searches: first, the search for cigarettes, and then, search for marijuana. In the Court's opinion, since the girl's purse was the "reasonable" place to hide cigarettes, then it was legal to search it. When cigarette papers, which are often used with illegal drugs, were found, there was a "reasonable" suspicion that the girl may have illegal drugs. This was an acceptable reason to further search the girl's purse.

### APPENDIX THREE

### *Bethel School District #403 v. Fraser* (1986)

This case involved the issue of what constitutes a student's right of free speech in a school setting. In this case, a student gave a speech nominating another student for an elective office in the school. This speech as part of a school-sponsored program studying self-government, was given at a voluntary assembly. School adminsitrators felt that the speech had sexually explicit metaphors and was in violation of the school's "disruptive conduct" policy. The student was suspended for three days.

The student's lawyers brought suit alleging that his First Amendment right to freedom of expression had been violated. They referred to the standard set by the Supreme Court in *Tinker v. Des Moines Independent School District* (1969). In this case, two students wore black armbands protesting the Vietnam War. They caused no problems and were not disruptive, but when ordered to take off the armbands, they refused. The Court ruled that this was an expression of free speech and since they were not being disruptive, their rights of freedom of expression were not lost at the "schoolhouse gate." The Court did recognize that a student's rights were often different from an adult's, but their rights could only be removed if their exercise "disrupts classwork or involves substantial disorder or invasion of the rights of others." The burden of proving disruption in school was on the shoulders of school officials. You decide this case.

### APPENDIX FOUR

### SUPREME COURT DECISION IN *FRASER*

Like many recent Court decisions, the Supreme Court ruled in favor of school officials. The Court held that the rights of students were different than those of adults. The court ruled that it was appropriate for schools to establish regulations prohibiting the use of vulgar or offensive terms. The Court did not establish standards for what language was appropriate and what was not. Rather, it stated that determination of what was appropriate or inappropriate rested with the school board. This changed the standard set in *Tinker* because the determination of appropriateness no longer rested on the basis of whether the offending free speech was disruptive.

### APPENDIX FIVE

### *Hazelwood School District v. Kuhlmeier* (1988)

This case involved two articles which were to appear at the beginning of a school newspaper. The first story dealt with teenage pregnancy and the second dealt with students who had gone through a divorce. The principal found these two stories objectionable, and because of time factors had them deleted. The school board upheld the principal's actions.

The Supreme Court was asked to rule on whether censoring the two articles violated the First Amendment. The first article on pregnancy had three first hand accounts from students that had become pregnant. The article had not used sexually explicit material and was written anonymously.

Each article ended on a fairly positive note. For example, one girl said that the experience made her "a more responsible person" and that "I feel that now I am a woman." The second article dealt with the impact of divorce on young people.

Many comments were made about divorce and how children felt who have experienced or were presently experiencing divorce. Many of the quotes from students portrayed their father in a negative way, such as saying the father was out of town most of the time, did not spend enough time with the family or that he argued about everything. Some quotes used student names (these were going to be deleted, but the principal was not aware of this when he censored the article).

The principal gave a number of reasons for deleting the two articles. He felt that the articles were not appropriate for all students at the school, especially the younger ones because of references to sexual activity and birth control. Also, the principal believed that even though the teenage pregnancy article used false names to keep the identities of the girls secret, they could still be identified from the facts in the story. The principal believed that the fathers in the divorce articles should be given a chance to consent to the article's publication or to respond to the charges leveled at them by their children. There was no time to rewrite the articles, so the principal stated that his only option was to delete the articles and publish a shortened version of the newspaper.

In deciding this case remember the *Tinker*, *T.L.O.*, and *Fraser* cases. Should the standard of disruptiveness *(Tinker)* be used? Is the newspaper a public forum? These articles would have been acceptable in a city newspaper (and in fact were later published in a St. Louis paper). Must the Court give students the same freedom of expression that it does other citizens in the United States? You decide this case.

## APPENDIX SIX

## SUPREME COURT DECISION IN *HAZELWOOD*

In *Hazelwood*, the Court ruled for the school officials. The decision was close with a vote of five to three. The majority decision stated that the school newspaper is not a public forum. It stated that the school does not have to tolerate student speech that was inconsistent with its "basic educational mission," even though the government could not censor this material outside of the school.

The Court pointed out that students' First Amendment rights were not the same as adults' rights in other settings and that rights of students must be applied in light of special requirements of the school environment. It ruled that the school board and its school administrators were best qualified to determine the emotional maturity of students and what was appropriate for them. The Court was specific in stating that the education of the youth of the nation was the responsibility of parents, teachers, state and local officials, but not federal courts. Finally, in effect, this decision reversed the criteria put forward in *Tinker* that "disruptiveness" was the key issue. Now determination is what is "reasonable."

# Liberty

**Historical Foundations of Individual Liberties/Grades 9-12** **Steve Jenkins**

This exercise will help students understand how the historical antecedents of the Bill of Rights affect their daily lives by protecting fundamental freedoms.

As a result of this lesson, students will be able to:

1. Recognize fundamental freedoms and understand why they're important.
2. Analyze and apply the historical antecedents to the Bill of Rights, matching various sources of liberties to the freedoms expounded in the Bill of Rights.
3. Look at some contemporary cases to see how these fundamental freedoms are applied today.

## A World Without Liberty

Have students read the story "A Day in the Life of James and Jane Justin" on p. 23. After reading the story, ask students to compile a list entitled "Fundamental Freedoms Denied James and Jane Justin." In the list, students should indentify each action by the guards, or supervisor, that denies what they believe to be fundamental freedoms, and briefly describe each freedom that is being denied. You may wish to do this as a brainstorming activity listing the denied freedoms on the chalkboard.

For each denied freedom, ask students to explain the purpose and importance of the freedom as a fundamental right of every individual. You may have students answer this question in small groups.

If there is time, ask students to do some research into sources of our fundamental freedoms (i.e., the historical antecedents of the Bill of Rights). After they have reviewed the historical material, have students match the specific sources of our liberties with the freedoms denied to the Justins in the state of Tyranny. Due to the extensive list of liberties, you may wish to have this as a small group activity, assigning different specific sources or historical periods to various groups.

## Applying Freedoms to Specific Cases

Have students read each case. Ask them to use materials from boxes elsewhere in this magazine and the amendments to the U.S. Constitution to answer the questions following each case.

### CASE 1

The police received information from a reliable informant that Peter Pusher was selling narcotics. The police then went to the building where Pusher lived. The police forced open the door to Pusher's bedroom. On a nightstand beside Pusher's bed, the police saw two capsules. Pusher grabbed the capsules and swallowed them. The police jumped on him and tried to get the capsules out of his mouth. When that failed, Pusher was handcuffed and taken to city hospital. At the direction of the police, the emergency room doctors pumped Pusher's stomach. Among the substances pumped out of Pusher's stomach were two capsules containing morphine (a drug that is prohibited by state and federal law). Pusher was charged with illegal drug possession. Based on the evidence introduced during Pusher's trial, including the morphine capsules, Pusher was convicted of illegal drug possession and sentenced to prison.

Pusher appealed his conviction. He claimed that the morphine capsules should not have been used as evidence in his trial because they were taken from his body against his will. Pusher said this was a violation of his constitutional right to be free from self-incrimination. Pusher asked the appeals court to reverse his conviction.

1. What, if any, fundamental freedoms are involved in this case?
2. Identify at least one source supporting the fundamental freedoms involved in this case.

**Suggested Answers.** Students' answers to point one may vary, but appropriate responses may include:

- freedom from unreasonable search and seizure
- freedom from self-incrimination
- right not to be deprived of life, liberty, or property without due process of law

Note: This case is based on *Rochin v. California*, 342 U.S. 166 (1951). In this case, the U.S. Supreme Court concluded that freedom from self-incrimination applies to evidence taken by forcible invasion of a suspect's body. The government cannot use evidence taken by forcible invasion of the body because the suspect was forced to testify against himself or herself.

### CASE 2

Ward Wanderer was charged with breaking and entering into a pool room with intent to commit petty larceny. These charges were felonies in Florida, where Wanderer lived. Unable to afford an attorney, Wanderer asked the trial judge to appoint an attorney to represent him. The judge refused, informing Wanderer that state law only permitted court-appointed attorneys to represent a defendant when that person was charged with a capital crime (that is, crimes that are punishable by the death penalty or life imprisonment). Wanderer was left to conduct his own defense in his trial. The jury returned a verdict of guilty. Wanderer was sentenced to serve five years in the state prison.

While in prison, Wanderer appealed his case. He claimed that the state's refusal to appoint an attorney was a violation of the due process quarantees of the Fifth, Sixth, and Fourteenth Amendments of the Constitution. He also claimed that due process included the right to the assistance of an attorney for his defense. Wanderer requested the appeals court to reverse his conviction. He asked that the court order a new trial with an attorney appointed to represent him.

1. What, if any, fundamental freedoms are involved in this case?

*(continued on page 24)*

Reprinted with permission from Constitutional Update: Liberty, a publication of the American Bar Association Special Committee on Youth Education for Citizenship.

## A Day in the Life of James and Jane Justin

Two young adults, James and Jane Justin, arrive in the nation of Tyranny on a rainy Friday morning. A road sign warns, *"Entering the state of Submission, United States of Tyranny: All Persons Entering Must Obey Tyranny's Authority—Violators Will Be Punished."*

The Justins stop their camper at a checkpoint where there are security guards. James Justin also notices security cameras that are aimed at their camper. The guards are well armed with what appear to be automatic rifles. Some of the guards have on green fatigues with the initials NGOT (National Guard of Tyranny); other guards wear brown uniforms with the initials SS (State Security).

One of the national guard asks the Justins for identification. The guard also asks them to step out of their camper and give keys to another national guard standing by. The guard reviews their driver's licenses, and then, without returning them, tells them to step inside the national guard headquarters. The guard with the keys has opened the rear door of the Justin's camper and has removed their luggage. The guard has also set a magazine and newspaper aside that was taken from inside the vehicle.

Meanwhile, James and Jane Justin have been separated—James Justin taken into a room by a male national guard and Jane Justin into a different room by a female guard. Both James and Jane Justin are searched. Afterwards, they are told to report to the main office of the national guard's headquarters. Upon entering the main office, the Justins observe a pile containing some of their t-shirts, some books, a religious pamphlet, a daily newspaper, and a hunting rifle. A supervisor of the guards informs the Justins that these materials are being confiscated by the state security for Tyranny because they contain subversive messages.

Jane Justin protests, asking what is subversive and threatening. She is told to shut-up. The supervisor holds up a t-shirt from the luggage that has a large question mark in the center with the words "QUESTION AUTHORITY" printed under the question mark. The supervisor says such expressions are not permitted in Tyranny, and that the other items confiscated were not on the approved reading list of the Ministry of Information. Only approved items may be read or spoken publicly in Tyranny.

The national guard supervisor then asks about the religious pamphlet. Jane Justin boldly proclaims, "Look, our religious beliefs are personal, and they are none of your business!" The supervisor calls her a "sacrilegious swine." A state security guard informs the Justins that there is only one religion in the state of Submission, and that is total obedience to Tyranny.

Jane Justin is forcibly pushed onto a chair by guards, and the supervisor tells her to shut-up and learn to obey authority or she will be bound and gagged. James Justin protests the treatment of Jane and demands the return of their property.

The supervisor calls in two other guards and tells them to place the Justins in separate detention rooms until a more thorough investigation can be done. Again, the Justins protest, asking why they are being detained and demanding the right to call an attorney. The supervisor laughs as the Justins are led off by the guards. James Justin asks the state security guard to help them. He asks, "Who can we appeal to in the state for help?" The state security guard soberly explains that there are no state rights—the only right is the absolute authority of Tyranny to control all lives.

The Justins are held in isolation for hours—no food, no sanitary facilities, and no communication with anyone. Meanwhile, the state security and national guard officers confiscate the Justin's camper. The officers eat food and drink beverages from the refrigerator, and they sleep in the bunks. When the Justins find out about the use and abuse of their camper, they are again outraged. The Justins are told that in Tyranny the people have to share their homes to help shelter and feed state and national guard officers. James Justin begins to cry. Jane Justin stares in anger at the guards. The journey into Tyranny had become a nightmare.

### LIST AND EXAMPLES

After reading "A Day in the Life of James and Jane Justin," ask students to make a list of the fundamental freedoms they believe were denied James and Jane Justin. For each freedom they identify, ask them to briefly explain why they believe this is a fundamental freedom.

Ask them where these rights come from. Have them review the Bill of Rights and/or the excerpts from the great documents highlighted in *Update*, Winter, 1986. After reviewing this material, have them identify at least one source for each fundamental freedom denied James and Jane Justin.

Here's an example. The Justins are denied freedom of movement; they are detained and taken into custody without being informed of any charges against them.

The Justins were imprisoned without the legal judgment of their peers. This action denies a fundamental freedom that is recognized in the following from the Magna Carta:

> No free man shall be taken or imprisoned or dispossessed, or outlawed, or banished, or in any way destroyed, nor will we go upon him, nor send upon him, except by the legal judgment of his peers or by the law of the land.

Their imprisonment also violates the Fifth Amendment to the U.S. Constitution:

> No person shall. . . be deprived of life, liberty, or property, without due process of law.

You may identify more than one source for each freedom denied the Justins.

*(continued from page 22)*

2. Identify at least one source supporting the fundamental freedoms involved in this case.

**Suggested Answers.** Students' answers may vary, but appropriate responses to question one may include:

- right not to be deprived of life, liberty, or property without due process of law
- right to be informed of the nature and cause of the accusation
- right to have the assistance of an attorney

Note: This case is based on *Gideon v. Wainwright*, 372 U.S. 335 (1963). In this case, the U.S. Supreme Court held that persons accused of felonies have the right to an attorney, and that if the accused is unable to hire his or her own attorney, then the judge will provide the accused with an attorney at the state's expense. This right was expanded in the case of *Argersinger v. Hamlin*, 407 U.S. 25 (1972). In that case, the U.S. Supreme Court held that persons accused of any crime, including a misdemeanor where a jail term may be imposed, have the right to an attorney. If the defendant cannot afford to hire an attorney, the state must appoint an attorney to represent the defendant at the state's expense.

**CASE 3**

Carla, a five-year-old child, was in a serious accident. She lost a lot of blood. Witnesses to the accident brought her to the nearest hospital. The doctors at the hospital agreed that Carla would die in a few hours unless she was given blood. Carla parents were called, but they refused to give their permission for a blood transfusion because blood transfusions were against their religious beliefs. The doctors asked a judge to issue a court order giving the hospital temporary custody of Carla. This would allow the doctors to give Carla a blood transfusion and other medical treatment necessary to save her life. The parents told the judge that they were Carla's legal guardians and that only they could decide how to properly care for her. The parents believed their religious faith would provide for Carla. The doctors insisted that Carla needed immediate medical treatment in order to save her life.

1. What, if any, fundamental freedoms are involved in this case? (freedom of religious beliefs)

Note: This is based on the case of *People ex rel. Wallace v. Laberenz*, 344 U.S. 824 (1952). The U.S. Supreme Court upheld a lower court ruling that freedom of religion includes the freedom of a parent to refuse medical treatment for a minor child because of religious beliefs about treatment, except where the treatment is necessary to save the minor's life or to treat a serious medical condition. In this example, then, the doctors would have the right to give her a transfusion, since her life was threatened. In a less serious case, the rights of the parents would prevail.

---

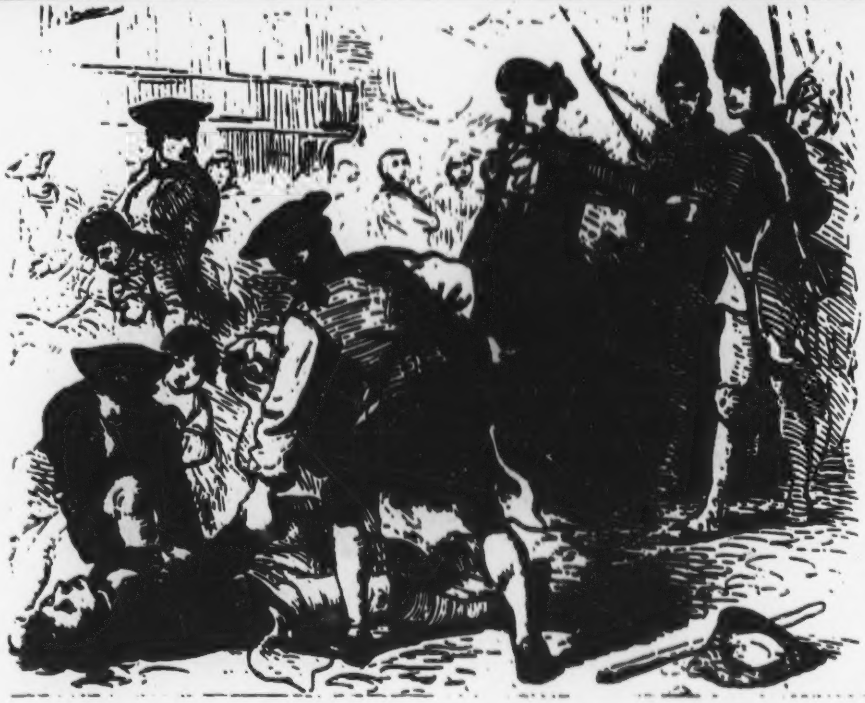
*Steve Jenkins is law-related education director of the Bar Association of Metropolitan St. Louis. He was assisted by Nancy Eschmann of the bar association in preparing these activities for publication. The three cases in this exercise are excerpted from* Excel in Civics: Lessons in Citizenship *(1985) by Steve Jenkins and Susan Spiegel, and reprinted by permission of West Publishing Company.*

BEST COPY AVAILABLE

# Justice

**Right to Counsel/Grades 9-12** **Alan L. Lockwood and David E. Harris**

Reprinted with permission from Constitutional Update: Justice, a publication of the American Bar Association Special Committee on Youth Education for Citizenship.



Historical Pictures Service, Inc.

This activity will help students explore three important points:

- the role of the lawyer in helping assure due process of law
- the difficulty of maintaining respect for law and for the rights of unpopular defendants in turbulent times
- the ethical dilemmas that have faced lawyers for many years

One of the great dramas of revolutionary history is provided by the Boston case of British soldiers accused of murder. The story of John Adam's difficult decision about whether to defend the soldiers provides a richly human element. But his decision has much wider ramifications. It encapsulates many of the themes that have run through this handbook: the struggle to solve problems through law rather than force, the growing respect for due process and legal fact finding, and the vital role of the lawyer.

### A Lesson for One Class Period

1. Students are assigned to read the episode (see below) and discuss the facts of the case.
2. Students then discuss the ethical issues.
3. The teacher/resource person leads a group discussion of one item from the Expressing Your Resoning activity.
4. The teacher/resource person guides the students in summarizing the main ideas raised during the discussion.
5. The resource person may wish to focus particularly on some of the ethical dilemmas for lawyers suggested by the Adams case. Should a lawyer accept the case of someone he or she knows is guilty? Should he or she accept the case of unpopular defendants, even at some personal risk? The resource person might use some examples from American history (the trials of the Haymarket anarchists, Sacco and Vanzetti, and the Scottsboro Boys) or use personal examples.

### A Young Lawyer's Dilemma

The decade of the 1760s was a period of growing tension between England and its American colonies. Attempts to tax the colonists triggered events that led to revolution.

The colonial reaction to one of many taxes, the Stamp Act, was swift and violent. On August 14, 1765, Andrew Oliver, the Crown-appointed stamp collector, had his effigy hung on a huge tree in central Boston that became known as the Liberty Tree. That evening a mob dragged the effigy to Oliver's elegant town house where they broke down the door and forced their way in. His furniture was destroyed and his family terrorized.

Twelve days later a raucous crowd made its way to the mansion of the colonial governor, Thomas Hutchinson. Hutchinson was dining with his wife and children. The crowd split the door with axes, plundering and gutting the house. They destroyed what they could not take away – china, rugs, clocks, furniture, and family portraits. Nothing remained but the roof, bare walls, and the floor.

Some of these protesters, led by Sam Adams, organized a group called the Sons of Liberty. Their aim was to turn street violence into political action.

British soldiers, in their bright red coats, were the visible objects of Boston's bitterness. The redcoats marched up

King Street in Boston with drums beating, fifes playing, and colors flying.

### THE HORRID MASSACRE

The climactic conflict came in Boston the night of March 5, 1770. It was a chilly moonlit evening with a foot of packed snow on the ground. Down King Street, Private Hugh White of the Twenty-ninth British Regiment walked his solitary post. As Private White stood near his sentry box a group of rowdies jeered at him until he lost his temper and knocked one of them down with his musket butt. The commotion drew a crowd. White became a target for snowballs, chunks of ice, and lumps of coal. Frightened, he hurried to the Customs House. He found the door locked as the surging crowd shouted, "kill him, kill him!"

The crowd threatened to overcome the lone redcoat. Captain Thomas Preston, officer in charge, heard the uproar and led a relief party of seven soldiers to the rescue. At bayonet point Preston's group forced its way through the throng to reach White. Forming a line alongside White, the soldiers were showered with flying objects, catcalls, and taunts.

Some of the soldiers' faces were bloodied. One private, clubbed into the gutter, scrambled to his feet, shouted out, "Damn you, fire!" and pulled the trigger of his musket. The shot hit no one, but the other soldiers began firing. When the smoke cleared, five men lay sprawled in the snow, three dead and two others mortally wounded. The stillness was then broken by the thud and rattle of rammers as the soldiers loaded their guns once again. Captain Preston then ordered his men to withdraw across the street. The wounded and dead were carried away.

### LET THE LAW DECIDE

Suddenly, all over the city, bells began to ring the alarm. An angry crowd of men appeared on the streets carrying any weapons they could find. Cries of "To arms!" echoed through the streets. Governor Thomas Hutchinson came immediately to King Street.

The governor struggled through the throng until he reached the State House. He appeared on the balcony, facing in the moonlight a seething, roaring, angry mass that filled the square below. Governor Hutchinson stood a moment and waited. "Go home," he said at last. "Let the law settle this thing! Let you also keep to this principle. Blood has been shed; awful work was done this night. Tomorrow there will be an inquiry." The crowd slowly dispersed. By three o'clock in the morning it was over.

Before sunrise a court of inquiry issued warrants for the arrest of Captain Preston and the eight soldiers. They were jailed to await their trial for murder. Sam Adams, leader of the Sons of Liberty, had already dubbed the incident the Horrid Massacre. Events of the night have survived in history as the Boston Massacre.

John Adams, a young lawyer, had heard sounds of violence the night before in the streets. He hurried home concerned about the safety of his family. The next morning he was met at his law office by a stranger named James Forest, a loyalist and friend of the accused British officer, Captain Preston.

Mr. Forest had just been with Captain Preston in jail. "Why are you here?" asked John Adams. Breathing hard, Mr. Forest begged Mr. Adams to undertake Captain Preston's defense. "His life is in danger," claimed Mr. Forest. "He has no one to defend him. Mr. Adams, would you consider – will you take his case?" Mr. Forest almost sobbed. The words came out in a rush. He had come to John Adams for two reasons: he could find no other lawyer to take the case, and Mr. Adams had a reputation for being a fair and decent man.

### ADAMS MUST DECIDE

The implications of the decision facing John Adams staggered him. All other lawyers in the city had refused to defend Captain Preston or the other eight soldiers. They feared for their own lives if it became public that they were defending the redcoats. John Adams pondered the importance of having due process of law and impartial justice in the colonies. He expected that this trial would prove as important a case as had been tried in any court of any country in the world.

Walking home to dinner that night John Adams was thinking about his dilemma. A group of Sons of Liberty stopped him on the street and warned him against defending "those murderers." Tories (those loyal to the crown) urged him to take the case. "Nine Tories out of ten," John told his wife, Abigail, gloomily, "are convinced I have come over to their side." He was greatly disturbed at the thought that his own friends, the liberty group, would scorn him and that the loyalists would regard him a hero if he decided to take the case.

John learned that Governor Hutchinson was determined, should a jury convict, to urge a king's pardon for all eight men. On the other hand, John Adams' skill might actually persuade the jury to bring a verdict of not guilty. The governor preferred a verdict of not guilty to a royal pardon. If John Adams took the case, he wondered whether he would be viewed as a loyalist sympathizer doing the bidding of King George III.

Arriving at home one evening, he found a window broken. Abigail showed him two rocks she had picked up in the room. It was clear to John that if he accepted the case, his house and family would be placed in jeopardy.

The case would be difficult to win. It soon became known that of the 96 witnesses prepared to testify, 94 made it appear that the fault lay entirely with the soldiers.

It would take a defense lawyer a great deal of time to prepare to challenge their testimony. If John took the case, the months before the trial would be wholly taken up in preparation. The trial itself would last a long time. John feared bankruptcy if all his time were taken up with this trial. Little time would be left for other legal work and the handsome fees collected for it. Clearly, accepting the case would require financial sacrifice for John Adams.

John Adams wanted to make an honest fortune for himself and his family, to improve his small farm, and to educate his children. Were he to take on the harassing job of defending the redcoats he would be taking a different course. Besides, his family had special need of him at home these days.

Another thought occurred to John. In the back of his mind he had considered a career in politics. What chance would he have of being elected to the legislature if he accepted the unpopular job of defending the British soldiers?

England certainly, and perhaps all Europe, would be watching the trial. John said to his friend Josiah Quincy, "It will serve our enemies well if we publish proof that the people's cause in America is led by a mere mob, a riotous and irresponsible waterfront rabble."

If John Adams took the case, most townspeople would think he was trying to screen murderers from justice. Yet, were the British not entitled to be defended against the charge of murder? John Adams struggled to reach a decision.

## Reviewing the Facts of the Case

1. Why did James Forest seek out John Adams to serve as the defense lawyer for the British soldiers accused of murder? (No other lawyer would take the case, and John Adams had a reputation for being a fair and decent man.)
2. Why did Adams think this trial would draw attention in other parts of the world? (He believed the handling of the trial would be viewed as a test of the American colonists' commitment to legal justice.)

## Expressing Your Reasoning

1. Should John Adams have accepted the job of defending the British soldiers? (In deciding whether John Adams should have defended the British soldiers, students might consider the obligations he may have had. Some possibilities include an obligation to himself, his family, his profession, the other colonists, the British government, or the principle of justice. Students could be asked which obligation, if any, was greatest, and they could be asked to state their reasons for ranking the obligations. Reasons supporting the position that Adams should have taken the case include: by accepting the case he would gain favor with the crown, the governor, and the Tories; under English tradition of law, an accused person is innocent until proven guilty and therefore entitled to a lawyer to wage a defense; due process of law would be set as a precedent in the colonies.)
2. Which would be the best reason for Adams *not* to take the case?
   - By accepting the case John would have risked being attacked by angry townsmen or having his house vandalized
   - John would have lost a lot of income by spending so much time preparing and trying the case
   - John might have hurt his political future by becoming known as the lawyer who tried to get the crown's soldiers off the hook
   - The liberty group in Boston was emerging as the chosen leaders of the people. As a faithful member of that group, John ought not to have done anything to undermine their influence
   - The troops were in Boston by order of the king and Parliament. Local citizens considered the soldiers unlawful foreign occupiers. The colonists did not consent to have the troops stationed in the city. Therefore, the soldiers were not entitled to the protection of the colonial courts, or a lawyer to defend them
3. After students have identified some reasons either for or against as better than others, they should be asked to explain why they made their selections. After eliciting their explanations, you may wish to list the following ways in which reasons may be characterized:

   A reason that emphasizes revenge against an offending party
   A reason that stresses the self-interest of one party in the dispute
   A reason that stresses the need to show compassion for one or more of the parties involved
   A reason that emphasizes following custom or tradition
   A reason that shows respect for legitimate authority
   A reason that shows concern for the welfare of society as a whole
   A reason that attempts to take into consideration the rights of all parties concerned

   Students may be asked if any of the above characterizations fits the reasons they selected. You may then discuss whether some of these types of reasons should be preferred over others. For example: Is a reason that shows respect for rule of law better than one that focuses on revenge?
4. Before the trial began John Adams came to believe that the soldiers were innocent of the charge of murder. Suppose John had believed that the soldiers were guilty as charged. Should he still have accepted the case? (In discussing students' answers, some considerations that might be raised are: A lawyer who believes a client is guilty may not be able to provide a good defense; one should not try to help a seemingly guilty suspect avoid punishment; if accused persons are acquitted by the work of clever lawyers, the victims of crime will be unprotected; a lawyer's professional obligation is to make the best possible case, regardless of personal opinions about a prospective client; if all lawyers refuse a case because they believe an accused person is guilty as charged, the accused will be denied the right to an attorney; under the law, no one is guilty until convicted in court.)

## Historical Note

John Adams did take the case of the British soldiers. All eight of them were found not guilty of murder, though two were convicted of the lesser charge of manslaughter.

The case had no detrimental effect on Adams's career – he was a revolutionary leader and ultimately the second president of the United States – but the case was a landmark in the development of due process of law in this country.

---

*Alan L. Lockwood teaches at the University of Wisconsin at Madison. David E. Harris teaches in the Oakland Schools in Pontiac, Michigan. This activity is adapted with permission of the publisher from their book* Reasoning with Democratic Values. *(NY: Teachers College Press,* © 1985 by Teachers College, Columbia University. All rights reserved) pp. 33-44.

Reprinted with permission from A Resource Guide for Lawyers and Law Students for Effective Classroom Use, a publication of the Resource Center for Law-Related Education, St. Louis.

## CASE STUDY

# A LITTLE GIRL'S STRUGGLE FOR AN EQUAL EDUCATION: THE CASE OF LINDA BROWN

Please read the following case and answer the questions below.

Linda Brown, an eight-year-old black student, wanted to attend the public elementary school nearest her home--less than five blocks away. She could not do so, however, because the school nearest her home was for white children only. Instead, Linda Brown had to cross railroad tracks and catch a bus to attend an elementary school twenty-one blocks away from her home.

Linda Brown's home was in Topeka, Kansas where segregated (separate) schools for black and white children were required by **law**. Linda Brown did not like being sent so far away to school. Linda's parents said the law was unfair. They said the Kansas law violated the United States **Constitution**, the highest law in the law. The Browns decided to take this case to **court** and ask a **judge** to change the law and end segregated schools. With the help of an **attorney**, Linda's parents filed a **lawsuit** against the Topeka School System claiming that their daughter was being denied the "equal protection of the laws" promised in the Constitution's Fourteenth Amendment. The Fourteenth Amendment states "No state shall . . . deny to any person within its jurisdiction the equal protection of the laws." The Browns argued that the law requiring segregated schools was unconstitutional. They said segregation had a harmful effect on black children because it made black children feel isolated and inferior (not as good as white children). The Browns claimed the separate school treatment denied them an educational opportunity equal to white children.

The Topeka Board of Education said they were obeying the state law requiring separate schools for black and white students. Attorneys for the Board argued that the separate schools were equal in terms of buildings, courses of study, and quality of teachers and instruction as required by law. They claimed that everything in the schools were equal--the only difference was white children could not go to schools for black children, and blacks could not go to schools for whites. In addition, the Board said the U.S. Supreme Court had already decided this type of case. In 1896, the Supreme Court ruled, in *Plessy v. Ferguson*, that "separate but equal" treatment did not violate the Constitution. And the Board argued that the schools for white and black children were separate and equal.

**YOU BE THE JUDGE--Answer the following questions:**

1. What are the important facts in this case? Who are the parties in the case? What is the problem?
2. What laws and constitutional issues are involved in this case?
3. What are the major arguments for both sides in this case?
4. If you were the judge in this case, what would you decide and why?
5. What are some other ways of resolving this problem and providing equal educational opportunity for all?

Based on the case, Brown v. Board of Education of Topeka, 347 U.S. 483 (1954).

© STEVE JENKINS

Reprinted with permission from A Resource Guide for Lawyers and Law Students for Effective Classroom Use, a publication of the Resource Center for Law-Related Education, St. Louis.

## THE CASE OF THE CONTROVERSIAL SCHOOL NEWSPAPER

A group of public high school student journalists, as part of their Journalism II class, had researched and written several articles for the May issue of their school newspaper. The articles were headlined as follows:

"Pressure Describes It All For Today's Teenagers"

"Pregnancy Affects Many Teens Each Year"

"Personal Accounts of Pregnant Teenagers"

"Teenage Marriages Face 75% Divorce Rate"

"Runaways and Juvenile Delinquents Are Common Occurences in Large Cities"

"Divorce's Impact On Kids May Have Life Long Affect"

Some of these articles were general and basically surveyed statistics concerning teenage pregnancy, teenage sexuality, birth control, relations with parents, abortion, and the consequences of teenage pregnancy. Another article discussed the so called "Squeal Law," which was a proposed rule (i.e., federal regulation) that would require federally funded clinics to notify parents when teenagers sought birth control assistance.

The articles that contained personal accounts regarding teenage pregnancy and the affects of divorce on children kept students' names confidential by using pseudonyms. In the article concerning teenage pregnancy, each student discussed her reaction to becoming pregnant, the reaction of her parents, her relationship with the father, and her plans for the future. The article regarding the impact of divorce on kids described some of the students reactions to their parents' break up, personal guilt, parents' behavior, remarriages, etc.

The students submitted their articles to the newspaper supervisor, who also served as the journalism teacher for several of the student reporters. After making some minor revisions, the supervisor took the page proofs to the school's principal. Because of a previous incident involving questioning of School Board policy in the school newspaper, the superintendent of the district had informed the newspaper supervisor to submit a copy of each issue to the school principal prior to publication.

The student journalists began to promote the May issue of the school newspaper. They made banners highlighting the articles (e.g., "Teenage Pregnancy," "Divorce," and "Juvenile Delinquency"). The banners were hung, as usual, in the school cafeteria. The students assumed that all was well, and they were awaiting the published edition to sell to the student body.

In the interim, the newspaper supervisor telephoned the principal and informed him that the printer was ready to print the May issue. The principal asked the supervisor to hold while he read the page proofs. The principal reviewed the page proofs and then informed the supervisor that some of the material was inappropriate and might cause legal problems (e.g., libel, invasion of privacy). Due to a shortage of time and printing deadline, the principal told the supervisor to delete all of the articles involving teenage pregnancy, divorce, and juvenile delinquency. The supervisor obeyed the principal's orders and had the printer delete those articles.

The published edition of the May issue of the school newspaper was delivered to the school. The journalism students picked the newspapers up and began selling them to the student body. Some of the student journalists observed that their articles were deleted. A group of seven student journalists met with the principal and protested the deletions. The principal informed the students that the articles were deleted because they were inappropriate, unsuitable, and "too sensitive" for "our immature audience of readers."

School board policy included the following regarding "School Sponsored Publications":

> **School sponsored student publications will not restrict free expression of diverse viewpoints within the rules of responsible journalism. School sponsored publications are developed within the adopted curriculum and its educational implications and regular classroom activities.**

The principal claimed that the articles in questions went beyond the rules of responsible of journalism, and that the subject matter was not appropriate to the adopted school curriculum for journalism. The principal reminded the students that he did not attempt to interfere with the students when they circulated xerox copies of their deleted articles at the school. However, he said as the responsible school authority in this are, he had to make the final decisions regarding what would be appropriate for the school sponsored newspaper that was part of the journalism course.

Several of the student journalists were angry over the deletions of their articles. The students sought legal help to assist them in filing a suit against the principal and the school district for denying them their constitutional free speech and free press rights. The students claimed that the school newspaper was a public forum that endorses first amendment rights. They referred to the annual September statement in the school newspaper that read . . .

> **The school newspaper, as a student-press publication, accepts all rights implied by the First Amendment of the United States Constitution which states that: "Congress shall make no law restricting . . . or abridging the freedom of speech or the press . . . "**

The newspaper explained, "That this right extends to high school students was clarified in the *Tinker v. Des Moines Community School District* case in 1969 [393 U.S. 503, 89 S.Ct. 733, 21 L.Ed.2d 731]. The Supreme Court of the United States ruled that neither "students nor teachers shed their constitutional rights to freedom of speech or expression at the school house gate." Only speech that "materially and substantially interferes with the requirements of appropriate discipline" can be found unacceptable and therefore prohibited." The student journalists did not believe their articles created any substantial interference with the normal educational process. In fact, they claimed their articles contributed to the students' education and well-being by presenting such informative topics of concern to teens.

**YOU BE THE JUDGE--Answer the following questions:**

1. **FACTS - What are the important facts in this case? (What parties are involved in this case, briefly describe what happened to those involved in the conflict, and what is the major problem or conflict?)**

2. **LAWS & CONSTITUTIONAL ISSUES - What law, or laws, is involved in this case? What constitutional issue, or issues, is involved in this case?**

3. **Briefly explain arguments for each party's side in this case.**

4. **If you were the judge deciding this case, what would you decide and why?**

5. **Restate the major problem, or problems, in this case. How would you recommend solving this problem, or problems, in the future?**

© [illegible], 1987

Reprinted with permission from A Resource Guide for Lawyers and Law Students for Effective Classroom Use, a publication of the Resource Center for Law-Related Education, St. Louis.

## "WHAT'S REASONABLE PUNISHMENT IN SCHOOLS?"*

Ned Notte and Terry Treble were seventh grade students at Jefferson Junior High, a public school. It seemed as though Ned and Terry were constantly getting in trouble. One of the assistant principals said the two of them had been punished on numerous occasions for being late to class; making noise and disrupting classes; fooling around in the halls; and not having gym outfits or tennis shoes for gym class. Both students had received detentions and paddlings from the assistant principal.

Following an awards assembly in the school auditorium, Ned and Terry jumped up on the stage and began to mimic rock and roll singers. The teacher in charge of the awards program told the students to get off the stage and go to class. The students continued to play on the stage, and the teacher told Ned and Terry to come down from the stage immediately.

They still refused and the teacher got the attention of the assistant principal who grabbed both of them and took them to his office. He administered a paddling to each student with the teacher as a witness. Each student received twenty licks.

Ned and Terry claimed that the spanking left bad bruises. Ned's parents took him to a doctor to be treated for his bruises, and he remained out of school for eleven days. Terry's parents said he was sore for almost two weeks.

Their parents filed a complaint in federal court claiming that the assistant principal and the school had violated the Eighth Amendment protection against cruel and unusual punishment and the Fourteenth Amendment right to due process (i.e., a fair hearing before punishment). The parents asked the court to award them damages for the students' injuries and to issue an injunction prohibiting all corporal punishment at the school.

The assistant principal said he was administering reasonable punishment in accordance with school policy and state law. An attorney for the school explained that state law and school board policy permitted corporal punishment under the following conditions:

- the paddling had to be administered by a principal, assistant principal, or the teacher in charge of supervising the students;
- the paddling could not be degrading or unduly severe;
- the paddling had to be on the buttocks;
- the paddle had to be less than two feet long, not more than three to four inches wide, and not more than one-half inch thick.

Furthermore, the school's attorney urged that most states permit corporal punishment in schools. The assistant principal warned that if students got away with breaking school rules and disrupting normal school routines, then the school would turn to chaos. Corporal punishment, when administered properly, was a way of maintaining discipline and order in school.

- over -

---

*Based on the case, Ingraham v. Wright, 430 U.S. 651 (1978)

© STEVE JENKINS

© STEVE JENKINS

YOU BE THE JUDGE:*

1. FACTS - What are the important facts in this case? What is the major problem or conflict? Who are the parties in the case?

2. LEGAL ISSUES - What laws (i.e., constitutional principles, statutes, rules) might apply to this case?

3. ARGUMENTS - What are the major arguments of each side in this case?

4. DECISION - If you were the judge in this case, what would you decide and why?

5. ETHICS - What should be the policy regarding corporal punishment? Should this policy apply to all aspects of society (i.e., treatment in the home, in schools, churches, correctional institutions)? Be able to exlain your responses.

6. ALTERNATIVE SOLUTIONS - What might be some other ways to resolve this type of conflict? For example, what might you have done if you had been the teacher in the auditorium? What if you had been the assistant principal?

*You may wish to consider role playing this conflict.

Reprinted with permission from A Resource Guide for Lawyers and Law Students for Effective Classroom Use, a publication of the Resource Center for Law-Related Education, St. Louis.

## DIFFICULT DILEMMA

## "KATHY'S CATASTROPHE: WHOSE FAULT IS IT?"

Read the following story and answer the questions which follow:

Kathy was a 9th grade student at Lincoln High School. She had long dark hair, bright brown eyes and a dynamite dimple that appeared whenever she smiled. Young men were always around Kathy, but most of the other 9th grade girls appeared jealous of Kathy. Kathy really did not have any "best" girl friends. Most students never dreamed that Kathy was lonely. Kathy's father worked long hours and when he wasn't working he was usually fishing. Kathy's mother was never home either. Her mother spent alot of time shopping and visiting with her friends. Kathy had no brothers or sisters. Often Kathy felt very lonely and neglected.

Before long, Kathy began seeing alot of a young man named Greg. Greg, a high school senior, was a member of the school's basketball team. Greg was considered to be one of the best guards in the entire state. Almost everyone predicted that Greg would make the State All-Star basketball team. Greg's future certainly appeared bright. With each passing week, Greg was inundated with scholarship offers by college basketball scouts. Kathy believed that she was part of Greg's bright future.

Kathy and Greg dated steadily during the basketball season. Soon, shocking reality shattered Kathy's world. Kathy had visited the family doctor complaining of morning nausea and the doctor discovered that Kathy was pregnant. Kathy responded like a confused, frightened fifteen year old. She collapsed and cried. After a few moments she asked the doctor to help her. Kathy said she wanted to have an abortion and she did not want her parents to know anything about this. The doctor reluctantly agreed not to inform her parents, but he refused to aid an abortion explaining that he was firmly opposed to abortions. Before he could offer advice, Kathy ran from his office.

Kathy ran to the school gym and waited outside basketball practice for Greg. Soon Greg appeared and Kathy ran to him and told him she had to talk with him alone. Kathy told Greg she was pregnant. Greg told her that he cared for her, but he was planning to go away to college on one of the basketball scholarships. Greg said, "I'm only seventeen and you're just fifteen. I'm not even thinking about marriage or being a father - I've got my future, maybe even the NBA. I can't be worrying about any baby." Greg told Kathy that if she would agree to have an abortion, he would arrange it and pay for it. Tearfully and with a torn heart, Kathy agreed to have the abortion and Greg said he would arrange it as soon as possible.

Greg arranged for the abortion and told Kathy the time and place. The night before the abortion, Kathy was very worried. She tried to talk to her mother, but her mother was too busy preparing to entertain her girlfriends. Kathy's father was working late. Kathy had called the family doctor earlier and told him about her scheduled abortion. The doctor seemed angered and abrupt. Before hanging up, the doctor told Kathy that if she had any problems after the abortion she should come to see him.

The next day, anxious and all alone, Kathy went to the designated clinic and had the abortion. Shortly after the procedure was performed, Kathy left the clinic and started for home. No one seemed to care at the clinic. Kathy felt very weak. When she got home, she went straight to bed. Her parents were not home, so she said nothing to anyone. During the night, Kathy hemorraged and died.

Kathy's parents were outraged. Her parents filed a lawsuit against the family doctor for failing to notify them of the situation. Her parents also demanded that the prosecuting attorney's office investigate the abortion clinic.

ANSWER THE QUESTIONS ON THE FOLLOWING PAGE:

ALTERNATE ASSIGNMENT: Ask a parent, social worker, juvenile officer, guardian ad litum, a member of the clergy, a representative from Planned Parenthood, etc. to read and answer the questions to this catastrophe.

KATHY'S CATASTROPHE (continued):

Please answer the following questions:

1. Did Kathy and/or Greg break any law(s)? If yes, briefly describe the law(s) which may have been violated.

2. Did Kathy have a legal right to choose to have an abortion? Briefly explain your answer.

3. If Kathy did not have the money to pay for the abortion, should the abortion been performed at a public health clinic free of charge? Briefly explain your answer.

4. Did Kathy, a minor, need her parents consent in order to have an abortion?

5. Should minors be required to have parental permission for abortions? Briefly explain your answer.

6. Did the family doctor have a legal obligation to notify Kathy's parents of Kathy's condition?

7. Should doctor's be required to notify the parent or guardian of a minor that their daughter is pregnant?

   that their daughter is seeking an abortion?

   that their daughter is seeking birth control information?

   that their daughter is being treated for veneral disease?

   Should any of these "notification rules" apply to minor sons?

8. If you were the judge hearing the lawsuit brought by Kathy's parents against the family doctor, what would you decide and why?

9. Was anyone to blame for Kathy's death? Briefly explain your answer.

10. What could, and should, have been done to have saved Kathy's life? Briefly explain your answer.

Reprinted from A Resource Guide for Lawyers and Law Students for Effective Classroom Use, with permission from the Resource Center for Law-Related Education, St. Louis, Publishers.

## TEENAGE EXECUTIONS: The Case of *Thompson v. Oklahoma*

William Wayne Thompson, along with three adults, abducted Charles Keene from a trailer. Keene was Thompson's brother-in-law. They took Keene to the banks of a nearby river, shot, stabbed, and beat him to death. The four of them threw Keene's body into the river. Keene's body was eventually discovered, and Thompson, along with the adults, was arrested and charged with first degree murder.

Thompson was not yet sixteen years old when he took part in the murder. The state held a transfer (i.e., certification) hearing to decide if Thompson should be treated as a juvenile or adult. Thompson claimed that he and the others had attacked Keene because Keene had been beating Thompson's sister, to whom Keene was married. The court rejected this claim and certified Thompson to stand trial as an adult. What do you think would be some reasons why the court rejected Thompson's claim?

Thompson was tried, by a jury, for murder in the first degree—a capital offense in Oklahoma where the murder occured. In other words, a person found guilty of this crime will be subject to one of two sentences: either the death penalty or life in prison without parole. The jury found Thompson guilty and concluded that Keene's murder was especially heinous, atrocious and cruel; therefore the jury recommended the death penalty. The judge sentenced Thompson to be executed.

Thompson appealed his conviction and sentence claiming that the sentence violates the Eighth Amendment. According to Thompson, the death penalty is cruel as applied to immature juveniles. Thompson argued that the death penalty is meant to deter someone from committing a cold, calculated murder, but most teenagers act on impulse; therefore, the death penalty for teens serves no reasonable purpose. Furthermore, Thompson points to state laws and U.S. Supreme Court precedents to prove his point that juveniles should be treated differently than adults.

Thompson points out that fifteen states have laws that expressly forbid the execution of persons eighteen or younger. Six other states require the sentencing body (in this case, the jury) to consider the age of the youth as a mitigating factor. Almost all states treat persons under sixteen differently than adults.

In addition, Thompson cites the 1958 Supreme Court decision in Trop v. Dulles, "the meaning of the Eighth Amendment must be drawn from the evolving standards of decency that mark the progress of a maturing society." According to Thompson, executing juveniles is not a standard of decency in our society. Also, in 1982, in Eddings v. Oklahoma, the Supreme Court considered another juvenile death penalty case and concluded that a judge or jury should consider the defendant's age, family history and history of emotional disturbance as mitigating factors during the sentencing phase of capital murder cases. Eddings sentence was changed from the death penalty to life imprisonment without parole. Finally, Thompson appeals to international law claiming that almost all civilized nations prohibit the execution of juveniles, including all of the leading nations of the Western Europe community, and the Soviet Union.

The state claims that the power to determine crimes and appropriate sentences (like the death penalty) is a power reserved to the states by the Tenth Amendment, and this fact is clearly evident since thirty-eight states have capital punishment statutes. Moreover, nineteen states permit the execution of juveniles under sixteen in some circumstances. And most alarming is the fact that 10 percent of murders are committed by persons under the age of 18.

In addition, establishing minimum age standards is another power reserved to the states. The state notes how states have differing age limits for obtaining driver's licenses, getting married, even attending school. This power should not be taken away from the state.

The state also points out that in 1976 the U.S. Supreme Court declared the death penalty constitutional, (see Gregg v. Georgia). Every term the Court continues to issue rulings recognizing a state's power to impose the death penalty as it continues to uphold lower court convictions, and states continue executing persons.

The state also contends that age has already been considered as a factor in the transfer, or certification, hearing. If a juvenile is certified to stand trial as an adult, then in the court's opinion, the juvenile is as mature as an adult and should be held accountable for his or her actions, if convicted, just as an adult would be responsible. The imposition of the death penalty for juveniles may teach other juveniles a lesson to think carefully before they act because the consequences could be deadly. Furthermore, Thompson was only a few days from being sixteen at the time of the murder. If he had been sixteen, he would have automatically been tried for murder as an adult in Oklahoma. A matter of a few days should not allow Thompson to avoid the proper punishment for this horrible homicide.

## YOU BE THE JUDGE

1. FACTS - What are the important facts in this case? What is the major problem(s)? Who are the sides, or parties, in this case?

2. LEGAL ISSUES - What laws (i.e., constitutional principles, statutes, rules) might apply to this case?

3. ARGUMENTS - What arguments would you make for each side in this case?

4. DECISION - If you were the judge in this case, what would you decide and why? Would you agree with Thompson and declare the death penalty for juveniles unconstitutional, or would you agree with the state, or would you offer a different opinion? Be sure to explain your decision.

5. HYPOTHETICALS - Would your answer have been different if Thompson had been sixteen at the time of the crime? What if he had been seventeen? eighteen?

6. ALTERNATIVE SOLUTIONS - Are there any other ways of resolving this conflict? For example, should state laws be re-written regarding capital punishment for juveniles? If yes, what type of law would you write?

## MAKING A DIFFERENCE

Contact a member of your state legislature or a representative from the juvenile court, and ask them the following questions:

1. Does your state have a death penalty statute? If yes, how many persons are on death row in your state?

2. Can juveniles receive capital punishment in your state? If yes, are any on death row now?

## EXTRA! EXTRA!

Plan and conduct a debate on the execution of juveniles. Use the library to research the latest U.S. Supreme Court decision on juvenile executions, as wel as researching and studying editorials for and against the death penalty for juveniles.

*Based on Thompson v. Oklahoma, 108 S.Ct. (1988)*

©Steve Jenkins, 1988

Reprinted with permission from A Resource Guide for Lawyers and Law Students for Effective Classroom Use, a publication of the Resource Center for Law-Related Education, St. Louis.

## WHEN SHOULD JUVENILES BE TREATED AS ADULTS?—YOU DECIDE
(A Certification Hearing)

You have probably seen or heard news stories about teenagers being tried for murder, convicted, and sentenced to prison or even to death. When can juveniles be treated and tried as adults? This decision and process of certifying juveniles as adults is determined by state law. Every state has a special procedure for deciding the question of when to transfer juveniles to adult criminal jurisdiction. The law must follow state and federal constitutional guidelines. The meaning of the Constitution is guided by decisions of the U.S. Supreme Court. In the case *Kent v. United States* (1966), the U.S. Supreme Court ruled that juveniles have a right to a due process hearing. The due process guidelines provide for a juvenile to have many of the same Fifth Amendment rights as an adult (for example, the right to an attorney and the right to examine all evidence in the case).

In most states a juvenile court judge holds a c certification or transfer hearing to decide if a young person should be tried as an adult. In reaching this decision, the judge hears evidence and considers many factors, including the following suggested by the U.S. Supreme Court in the *Kent* case:

(1) The seriousness of the offense (for example, was the act committed in a violent or willful manner, and did it result in damage to property or injury to persons?).

(2) The amount of evidence supporting the allegation (that is, is there strong evidence to indicate that the juvenile did commit the offense?).

(3) Adult involvement (for example, are there adults that are accomplices in the offense? Should the juvenile be treated the same as the adults that are involved?).

(4) The maturity of the juvenile (for example, what is the juvenile's age, does the juvenile appear and act as an adult in most situations? Does the juvenile understand the difference between right and wrong?).

(5) Previous juvenile record (for example, has the juvenile been in trouble with the law on previous occasions? How often has he or she been in juvenile court? What has the court decided in the past offenses and has the juvenile obeyed the court's decisions?).

(6) The likelihood of rehabilitation if treated as a juvenile offender (for example, if kept in juvenile jurisdiction, will the juvenile correct his or her behavior? Does the juvenile have family support? Does the juvenile have a good school record?).

Read each of the following cases. Imagine you are a juvenile judge hearing these cases. Read each case and decide if the juvenile(s) should be certified as an adult. Briefly explain your answer.

### CASE 1

While recklessly driving without a license, Jerry, age 16, hits a school bus head-on. The bus bursts into flames. Twenty-seven young people die in the crash, and thirty-three are seriously injured. Jerry and an eighteen-year-old friend, Keith, survive the crash with minor injuries. Evidence indicates that Keith and Jerry were probably drinking. Jerry's blood alcohol content at the time of the accident makes him legally intoxicated. As a result of a previous incident, Jerry has had his license suspended for driving while intoxicated. Keith, an adult, also has one DWI conviction.

Jerry is an above average student in school. He lives with both of his parents. Jerry's father is an alcoholic and has on occasion beaten Jerry. Jerry likes school but hates his home life. Other than the previous DWI conviction, Jerry has never been in trouble with the law. Jerry also claims Keith pressured him into getting drunk.

*Should Jerry be certified to stand trial as an adult on the charges of vehicular manslaughter (murder with an automobile while in an intoxicated condition) and vehicular injury (aggravated assault with an automobile while in an intoxicated condition)? Why or why not?*

## CASE 2

Jane, age 15, runs away with her boyfriend, Jack, age 16. They travel to a neighboring state. Jane and Jack have a hard time making a living. They both dropped out of high school. Jack finds work at minimum wage at a fast food restaurant. Jane has to stay with their baby. Jack suggests that they should think about giving up the baby because they are not able to afford to take care of the baby. After a long discussion, Jack and Jane decide to leave the child, wrapped in a blanket, on the steps of a church. Feeling depressed about abandoning their child, Jane and Jack start drinking heavily and both eventually pass out, drunk. During the night, the baby becomes cold and ill. When some people at church find the baby, they rush the baby to the emergency room at a nearby hospital. The baby is diagnosed as having pneumonia and the baby dies.

Soon after, the police investigate and take Jane and Jack into custody. Jack and Jane admit to abandoning the baby but claim they meant no harm. They were trying to leave the baby in a decent place. Jane has a juvenile record of running away. Jack has no juvenile record. Jack's mother offers to take Jane and Jack into her home until they get back on their feet.

*Should Jane and Jack be certified to stand trial as adults charged with manslaughter, endangering the welfare of child, and abandoning a child? Why or why not?*

## CASE 3

Jim, age 14, and a group of guys he hangs out with had been drinking some beer and wine, and some had been smoking marijuana. Some of the guys are 18. Jim is the youngest in the group, although he acts older than his age.

Jim and the group break into Central High School one night. They vandalize the science lab causing hundreds of dollars in damages, and they take some of the computers and one of the VCRs out of the school.

A janitor sees the guys carrying the computers and begins to chase them. Jim is almost caught by the janitor, but just as the janitor reaches Jim, the janitor slips and hits his head on the pavement. The guys manage to get away with some of the computers and a VCR. The janitor is able to get to a telephone and call police. The janitor is taken to a hospital and is treated for some bruises and broken wrist. The janitor identifies Jim because the janitor remembers how nice Jim is in school. The janitor also remembers Jim as a finalist in a "Just Say No" poster contest at Central High.

Jim is taken into custody by the police. Jim lives with his mother and four other brothers and sisters. Jim's mother and father are divorced. His mother works two jobs in order to raise all of the children. Jim has been in juvenile jurisdiction for illegal possession of alcohol twice before.

*Should Jim be tried as an adult for breaking and entering? For vandalism? For aggravated assault? Why or why not?*

©Steve Jenkins, 1988

# Justice

**Making Wrongs Right/Grades K-6** **Dale Greenawald**

Slug Signorino

This activity is designed to help primary students to analyze situations where a wrong has occurred and offer recommendations for corrective justice.

### Objectives

To apply the concept of corrective justice and develop critical thinking and problem solving skills. To emphasize that courts are to help those who were wronged, not just punish people.

### Procedures

The teaching time is approximately 30 minutes for grades K-3 and approximately 45 minutes for grades 4-6. This lesson is a natural for a community resource person from the justice community (e.g., a lawyer or judge).

Explain that after a case is decided and a person is found guilty a court has several functions. It wants to protect society so that the person can't hurt anyone else. It also wants to help the guilty person improve himself/herself. It also wants to punish the guilty person so that he/she won't break the law again. Finally, the court wants to help the person who was hurt.

Read each case. Ask students to explain what happened. Ask what might be done by those involved to correct the situation. Why do they think that their solution is a good one? The resource person will critique responses.

**K-3 READINGS**

1. Mike wrote on the bathroom walls. When he admitted that he had been the person responsible, the principal asked him how he might make things right.

   Ask the class for suggestions about what would be fair. What might Mike do and why should he do that? Why is this a good suggestion and how will it help? Critique answers in a positive manner—"what about?" "did you think of . . .?"
2. Sarah was shopping with a friend and she took and ate some candy without paying for it. When she tried to leave the store the manager asked why she hadn't paid for the candy she ate. Sarah did not have any money to pay for the candy. She doesn't have any money anywhere. What can Sarah do to make this wrong right?
   - A. Have the class brainstorm solutions and how they might make things better. What would be fair?
   - B. What can the manager do if he wishes to stop this kind of behavior?
3. Three children are playing with matches at the picnic grounds, Blue Bell Shelter. A strong wind comes up and a spark sets the grass on fire. The shelter and many acres of land are burned, and several animals kept in a small zoo nearby are killed or injured. Before trying to make this wrong right, think about:
   - Some animals are gone forever.
   - The children are too small to rebuild the shelter.
   - The community cannot use the picnic grounds.
   - It cost a lot of money to put out the fire.
   - It costs a lot of money to rebuild the shelter.
   - A. How can this wrong be made right? What would be fair?
   - B. What can the children do even though they cannot make things the way they were?

**FOR USE WITH GRADES 4-6**

Several students at Westmeadow Elementary School see a television ad for the Whiz-Bang Mighty Automobile toys. It looks like a really neat set of toys. In the ad it looks like the toys are several feet long and have motors. The set costs $45.00. Each of the children work very hard cutting grass, doing chores and helping neighbors for several months to earn money. They stop going to movies and buying candy so that they can save all of their money for the Whiz-Bang Mighty Automobile toys. When the toys arrive, they are about six inches long, made of plastic, and powered by a rubber band. All of the toys are broken within a few days of use. They simply fell apart. It is clear that the advertisement was misleading.

**CLASS DISCUSSION**

1. What is fair?
2. What are the legal rights of the children?
3. How can this wrong be righted?
4. If you were a judge and this case came to your court, how would you right the wrong?

The resource person should explain the rights of the children in this case and what would probably happen if they complained to the county consumer affairs office. Also, if the students took their case to small claims court what might happen?

The lawyer or judge should tell about different programs and ways the courts can right wrongs. For example:

1. work release programs
2. community service sentences
3. paying back the cost of the damages (restitution)
4. repairing what can be fixed

*Dale Greenawald is an educator in Boulder, Colorado.*

Reprinted with permission from Constitutional Update: Justice, a publication of the American Bar Association Special Committee on Youth Education for Citizenship.

The following lessons are taken from several Law in a Free Society K-12 curriculum units on *procedural justice*, or due process. They are concerned with the fairness of the procedures used to gather information and make decisions.

The opening portion of the exercise could be used with students at any grade level 7-12. It introduces the concept of procedural justice with relatively simple examples.

For more advanced students (say those in high school) you might want to use the case of Sir Walter Raleigh (1603), which is included in this lesson, to illustrate how due process developed, and why the framers of the Constitution considered it vital. For younger students, use the case of John Lilburne (1637), in the box on page 15, and ask students to answer the same questions as follow the Raleigh case.

### Introduction

Give students the following situations and ask them if they are fair.

- You are accused of having done something wrong and are punished immediately without having had an opportunity to tell your side of the story.
- You and several friends have planned to meet to go together to see a motion picture. When you arrive at one of the friends' homes to discuss which show the group should see, you are irritated to find the group has already made the decision to see a film in which you have no interest, without waiting to give you an opportunity to express your opinion.
- A city council holds a hearing during which it decides how to spend five million dollars of tax money. Notice of the hearing is published so that interested individuals and groups from the community may attend the meeting and express their opinions on how the tax funds should be used.
- A suspected terrorist is tortured for five days before confessing to having participated in several bombings in which a number of people were killed.

Each of the above situations involves an issue of *procedural justice*. Procedural justice refers to the fairness of the *ways* certain things are done. More specifically, procedural justice refers to: (1) the fairness of the *ways* information is gathered, and (2) the fairness of *ways* decisions are made. (It *does not* refer to the fairness of the decisions themselves.)

The goals of procedural justice are: (1) to increase the chances that all information necessary for making wise and just decisions is gathered, (2) to ensure the wise and just use of information in making decisions, (3) to protect the right to privacy, human dignity, freedom, and other important values and interests such as distributive justice and corrective justice, and (4) to promote efficiency.

### The "Keystone of Liberty"

Scholars and others who have studied the subject of procedural justice often claim that it is the "keystone of liberty" or the "heart of the law." Observers of world affairs have sometimes claimed that the degree of procedural justice present in a country is a good indication of the degree of freedom, respect for human dignity, and other basic human rights in that country. A lack of procedural justice is often considered an indication of an authoritarian or totalitarian political system. Respect for procedural justice is often a key indicator of a democratic political system.

People who are not familiar with the subject often place less importance on procedural justice than on other values or interests. To the average person it is sometimes difficult to believe that the way information is gathered and the way decisions are made are as important as the outcome. Some might claim, for example, that it is not so important how the Congress or the president or the courts make their decision as what decisions they make. It is sometimes difficult to be as concerned about how the police gather evidence on a suspected murderer or what procedures are used in the trial of such persons as about making right decisions and punishing guilty persons and/or putting them in a place where they cannot hurt anyone else.

#### WHAT DO YOU THINK

1. What situations have you observed in your home, school, and community in which issues of procedural justice have arisen?
2. Why might adherence to the goals of procedural justice be important in the private sector?
3. What might be the differences in adherence to the goals of procedural justice among democratic, authoritarian, and totalitarian political systems? What examples can you give from recent or historical events?

### Fair Procedures: The Trial of Sir Walter Raleigh (1603)

Ask students to read the following account of the arrest and trial of Sir Walter Raleigh. Then ask them the questions that follow.

Sir Walter Raleigh (1554?-1618) was one of the most colorful figures in English history. Soldier, sailor, explorer, poet, statesman, scientist – Raleigh seemed to do well in almost everything he tried.

As a young man, Raleigh caught the attention of Queen Elizabeth I of England, who was impressed by his handsome appearance, sharp wit, bold advice, and daring exploits. A fierce fighter and expert seaman, Raleigh rapidly became one of the queen's favorites.

When Elizabeth died in 1603, Raleigh had the bad luck to anger her successor, James I. This gave Raleigh's enemies, and he had made many over the years, a chance to plot against him. They told the new king that Raleigh had plotted to overthrow him and put Lady Arabella Stuart on the throne. They claimed that he had planned this rebellion with the help of a man named Lord Cobham.

Reprinted with permission from Constitutional Update: Justice, a publication of the American Bar Association Special Committee on Youth Education for Citizenship.

BEST COPY AVAILABLE

On the night of July 20, 1603, as Raleigh stood on the terrace of his home talking with friends, there was a loud knock at the door.

"In the name of his majesty, James I, open up," rang out a familiar voice.

Suddenly the door was flung open and Sir Robert Cecil, First Secretary to the king and Raleigh's sworn enemy, burst in. With him were several members of the king's guard.

"In the king's name I place you under arrest," Cecil said. "On what grounds?" Raleigh asked.

But Cecil would not reply and Raleigh was taken away. His friends dared not protest.

Raleigh was questioned by Cecil in private. He had no chance to know the full charges against him or to confront his accusers. He was not permitted the help of a lawyer. Instead he had to rely only on his quickness, and wit, and basic knowledge of law and the current political situation.

During the time that he was being questioned by Cecil, Raleigh learned that the First Secretary had tricked Lord Cobham into bringing charges of treason against him by telling Cobham that he, Raleigh, had accused Cobham of that crime.

A wave of hopelessness swept over Raleigh. If the king wanted him dead, there was little he could do. Judges had lost their offices and juries had been put in jail for acquitting prisoners that the king wanted found guilty.

There was almost no evidence against Raleigh. While he may have known something about the plot against the king, he was not a conspirator.

Raleigh was brought to trial on November 17, 1603. The proceedings, which were directed by a group of commissioners, took place behind locked doors.

Among the commissioners at Raleigh's trial was Lord Thomas Howard, who had fought with Raleigh as a soldier and hated him. There was Lord Henry Howard, who later admitted that he had actually started the plot against the king for which Raleigh was now being tried. Sir Robert Cecil, the man who had trapped Raleigh in the first place, was also one of the commissioners.

Raleigh had prepared himself as well as possible. But since he did not have the help of a lawyer, this was a difficult task. All Raleigh was allowed in the way of a defense was ink and paper with which to take notes. He could not speak until he was given permission to do so, and this permission was almost never given. Whenever Raleigh rose to protest a point in the prosecution's story against him, or to tell his own version about what his involvement in the plot actually was, he was silenced immediately.

The "confessions" written by Lord Cobham were the most important evidence used against Raleigh. Raleigh asked that Lord Cobham be brought to court so that he could face and question him.

Lord Cobham was alive and could have been brought to the trial. But the commissioners were afraid that in this way Raleigh could prove his innocence. They refused to let Raleigh face his accuser.

The commissioners took just fifteen minutes to find Raleigh guilty. He was sentenced to be executed but, on the day his sentence was to be carried out, Raleigh's punishment was reduced. He spent the next thirteen years, until 1616, as a prisoner in the Tower of London. Whenever Raleigh would ask to speak with the king, in order to have his case reopened, his request was always denied.

## Evaluating Whether Procedures Are Fair

1. Information Sought or Decision to be Made
   - What is the information being sought? (Evidence of whether Raleigh was involved in a plot to overthrow the king.)
   - What is the decision being made? (Whether Raleigh was guilty of treason.)

2. Discovery and Use of Information

   a. *Comprehensiveness*
   To what degree does the procedure being used increase the chances that all information necessary for a wise and just decision is discovered?
   - What steps furthered this goal and how? (None).
   - What steps did not further this goal and how? (Raleigh was denied the right to speak at his trial, to have witnesses on his side, to have a lawyer help him answer the accusations, or to confront and cross-examine his accuser.)

   b. *Public Surveillance*
   To what degree do the procedures used allow interested members of the public to observe how information is being gathered and/or used in the making of decisions?
   - What steps furthered this goal and how? (None)
   - What steps did not further this goal and how? (The trial was held in secret "behind closed doors.")

   c. *Effective Presentation*
   To what degree do procedures enable interested persons to effectively present information they wish to be considered in the decision making process?
   - What steps furthered this goal? (None)
   - What steps did not further this goal and how? (Raleigh was denied the right to speak at his trial, to have a lawyer help him present his side of the case, and lacked enough knowledge of the law to have witnesses on his side and to cross-examine witnesses against him.)

   d. *Impartiality*
   To what degree has there been impartiality in gathering information and/or making decisions?
   - What steps furthered this goal and how? (None)
   - What steps did not further this goal and how? (Several of the commissioners hearing the case were Raleigh's enemies and were responsible for his arrest and trial. Also, judges and juries knew that if they set free someone the king wanted found guilty, they could be put in prison.)

   e. *Reliability*
   To what degree do the procedures insure the reliability of the infomation gathered?
   - What steps furthered this goal and how? (None)
   - What steps did not further this goal and how? (The person who had brought charges against Raleigh had been tricked into doing so by one of the commissioners in order to save himself from prosecution. Raleigh was not allowed to confront and cross-examine this person.)

   f. *Notice*
   To what degree do the procedures provide interested persons adequate notice of the reasons for

gathering information and/or the time of a hearing to enable them to make adequate preparation?
  - What steps furthered this goal and how? (None)
  - What steps did not further this goal and how? (Raleigh was not informed of the charges against him until long after his arrest or of details until his trial.)

h. *Detection and Correction of Errors*

To what degree do the procedures enable interested persons to review what was done in order to detect and correct errors?
  - What steps furthered this goal and how? (None)
  - What steps did not further this goal and how? (Raleigh was imprisoned for 13 years and his requests to speak with the king to have his case reopened were all denied.)

3. Protection of Related Values and Interests

a. *Privacy and Freedom*

To what extent, if any, does the procedure protect the right to privacy or freedom?
  - What steps furthered this goal and how? (None)
  - What steps did not further this goal and how? (Raleigh imprisonment)
  - Did the procedure endanger freedom for the individual or society? (The lack of procedural safeguards endangered Raleigh and all of society.)

b. *Human Dignity*

To what extent, if any, does the procedure protect the right of each person to be treated with dignity no matter what his beliefs or actions may be?
  - What steps furthered this goal and how? (None)
  - What steps did not further this goal and how? (All of the procedures used violated basic rights to proper procedures, protection of the innocent, etc.)

c. *Distributive Justice*

To what extent, if any, does the procedure protect basic principles of distributive justice?
  - What steps furthered this goal and how? (None)
  - What steps did not further this goal and how? (Burden of imprisonment without being deserving of such treatment)

d. *Practical Considerations*

To what degree, if any, are practical considerations important in deciding whether or not a procedure is proper?
  - What steps furthered this goal and how?
  - What steps did not further this goal and how?

## What Do You Think

Were the procedures used for gathering information and making a decision fair? (Why)

What suggestions would you make, if any, for improving the procedures used? (Why)

---

*This article adapts lessons found in three levels of the Law in a Free Society curriculum, a set of written and audio-visual materials containing six levels of sophistication for students from kindergarten through high school.*

## The Trial of John Lilburne (1637)

**Ask students to read the following historical incident. Use the questions that follow the Raleigh case (pp. 14-15) to evaluate the procedures used in this incident.**

During the 17th century in England, the kings created a court called the Court of the Star Chamber. The judges on this court were royal ministers. The Star Chamber had the authority to require any citizens to attend its sessions whether they were suspected of a crime or not. Persons brought before the court were often not accused of a crime or told why they were being questioned. Many times they were questioned at length in secret, even though there was no evidence against them, just on the chance that they might give information on themselves or others that would indicate a criminal act. Often people being questioned were tortured or threatened with cruel punishments if they failed to say what the judges or prosecutors wanted them to say.

John Lilburne was a Puritan. The Puritans were a group of people who criticized the official Church of England and had established their own church. They were unpopular with many of the people and, in particular, with some of the most important people in the government.

In 1637, John Lilburne was brought before the Star Chamber. He had just returned to England from Holland and was accused of sending unpopular and scandalous books from there to England. Lilburne said that he had the right to a trial in a regular court of law, to be given notice of the charges against him, to be formally charged with a crime, to have a lawyer help him answer the charges, to have witnesses on his side, to confront and cross-examine witnesses against him, and not to be forced to testify against himself. He was not given any of these rights.

For refusing to answer questions asked by the judges of the Star Chamber, Lilburne was fined, tied to a cart and whipped as the cart drove through the streets of London. He was then placed in a pillory in a public square with his back bared to the noon sun for two hours. He told everyone who would listen to resist the tyranny of the Church of England. Since he refused to be quiet, he was gagged so cruelly that his mouth bled. He was then placed in irons in prison for ten days without food.

After he was released, the English Parliament voted that he had been treated illegally, that he be paid to compensate for what he had suffered, and that the Star Chamber be abolished.